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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

— — —

THE HONORABLE GEORGE C. HANKS, JR., JUDGE PRESIDING

USA, No. 4:21-CR-00009-1

Plaintiff,

vs.

ROBERT T. BROCKMAN,

Defendant.

ORIGINAL

COMPETENCY HEARING -- DAY 6 AM SESSION

OFFICIAL REPORTER'S TRANSCRIPT OF PROCEEDINGS

Houston, Texas

MONDAY, NOVEMBER 22, 2021

APPEARANCES:

For the Plaintiff: COREY J. SMITH, DOJ

CHRISTOPHER MAGNANI, DOJ

LEE F. LANGSTON, DOJ

BORIS BOURGET, DOJ

For the Defendant: JASON S. VARNADO, ESQ., Attorney
at Law

COLLEEN O'CONNOR, ESQ., ATTORNEY
AT LAW

JAMES P. LOONAM, ESQ., Attorney
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PROCEEDINGS

(The following proceedings held in open court.)

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MONDAY, NOVEMBER 22, 2021 -- 8:39 A.M.

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THE COURT: Good morning, everyone and welcome back. I hope you all had a nice weekend, and getting to see your families after awhile. We're ready to get started again. The Prosecution has rested, so Mr. Loonam or Mr. Varnado, you may call your first witness.

MR. VARNADO: Thank you very much, Your Honor. And the Defense calls Dr. James Pool.

THE COURT: Okay. Dr. Pool. Good morning, Dr. Pool.

THE WITNESS: Good morning.

THE COURT: If you could raise your right hand.

JAMES POOL,

(For the Defendant)

called as a Witness, having been duly and regularly sworn, testified as follows:

THE WITNESS: I do.

THE COURT: Okay. Please take the

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08:40:33 1 stand, sir. Feel free to take your mask off when
08:40:36 2 you are on the stand.

08:40:36 3 **DIRECT EXAMINATION**

08:40:36 4 **BY MR. VARNADO:**

08:40:45 5 **Q.** Good morning, Dr. Pool.

08:40:46 6 **A.** Good morning.

08:40:47 7 **Q.** You got a bottle of water up there if you need
08:40:51 8 it.

08:40:52 9 **A.** Thank you very much.

08:40:52 10 **Q.** Can you state and spell your name for the
08:40:54 11 record?

08:40:54 12 **A.** James L. Pool, P-O-O-L, M.D.

08:41:00 13 **Q.** Dr. Pool, what do you do for a living?

08:41:02 14 **A.** I'm a Professor of Medicine and Pharmacology at
08:41:06 15 the Baylor College of Medicine in Houston, Texas.

08:41:09 16 **Q.** We're going to talk more in detail about what
08:41:11 17 you do on a daily basis, but I want to get
08:41:14 18 background information. What is your connection to
08:41:16 19 Mr. Brockman?

08:41:17 20 **A.** I am Mr. Brockman's primary care physician.

08:41:21 21 **Q.** How long have you been Mr. Brockman's primary
08:41:23 22 care physician?

08:41:24 23 **A.** Since October of 2018.

08:41:26 24 **Q.** Okay. At the Baylor College of Medicine, what
08:41:30 25 positions do you hold? You mentioned professor.

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08:41:33 1 Any other titles that you have there at Baylor
08:41:36 2 College of Medicine?

08:41:36 3 **A.** Well, things that I've done previously, I was
08:41:42 4 the Director of Cardiovascular and Hypertension
08:41:45 5 Research in the DeBakey Heart Center. That is
08:41:48 6 something that I no longer do. I'm totally devoted
08:41:52 7 to patient care now.

08:41:53 8 **Q.** So with the title of "Professor," your
08:41:56 9 day-to-day activities involve taking care of
08:41:58 10 patients?

08:41:58 11 **A.** Correct.

08:41:59 12 **Q.** All right. And are there any particular
08:42:00 13 clinics that you are involved with at the Baylor
08:42:04 14 College of Medicine?

08:42:04 15 **A.** The Comprehensive Healthcare Clinic.

08:42:09 16 **Q.** Can you give us a brief overview of what the
08:42:12 17 Comprehensive Healthcare Clinic is? Just high
08:42:14 18 points now.

08:42:15 19 **A.** The Comprehensive Healthcare Clinic -- rather
08:42:24 20 than being a cliché, it is what it purports to be,
08:42:27 21 and that is comprehensive care of each individual
08:42:30 22 from the perspective of internal medicine. And we
08:42:35 23 manage a wide array of medical problems, and we
08:42:40 24 solicit help from a wide variety of Houston,
08:42:46 25 American, and international specialists to help

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08:42:49 1 support our mission for very unique medical
08:42:52 2 problems.

08:42:53 3 Q. Okay. Can you briefly describe for the Court
08:42:55 4 your educational and post-graduate training?

08:42:59 5 A. Going back to undergraduate school?

08:43:03 6 Q. Yeah, undergraduate and then medical school.

08:43:07 7 A. Okay.

08:43:08 8 MR. LANGSTON: Objection. I don't
08:43:09 9 think this witness is testifying as an expert. So I
08:43:12 10 think maybe getting his medical education may not be
08:43:15 11 relevant here.

08:43:15 12 THE COURT: But it's important for the
08:43:17 13 Court to be able to evaluate the witness's
08:43:20 14 credibility and validity. So respectfully,
08:43:23 15 overruled. So...

08:43:23 16 MR. VARNADO:

08:43:23 17 Q. Please go ahead.

08:43:25 18 A. Okay. I was born in the State of Iowa, but my
08:43:29 19 family finally ended up in Tulsa, Oklahoma. I went
08:43:33 20 to undergraduate school at the University of Tulsa,
08:43:39 21 where I received my bachelor of science degree in
08:43:41 22 1968.

08:43:42 23 Q. Okay.

08:43:43 24 A. And then I was accepted to the University of
08:43:46 25 Oklahoma School of Medicine, which is in Oklahoma

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08:43:50 1 City, distinctly different from the location of the
08:43:53 2 university in Norman. I completed my M.D. degree
08:43:58 3 there in 1972, and left to take a position as a
08:44:03 4 first-year resident, subsequently second and
08:44:06 5 third-year resident and then fellow at Duke
08:44:10 6 University in Durham, North Carolina.

08:44:14 7 While I was finishing my fellowship
08:44:16 8 -- my first year of fellowship at Duke University,
08:44:20 9 some former colleagues recruited me to go to the
08:44:25 10 National Institutes of Health in Washington, D.C.
08:44:29 11 There I was given the opportunity to finish my
08:44:34 12 fellowship and begin my career as a research scientist.

08:44:37 13 My focus at the National Institutes
08:44:40 14 of Health was in hypertension, high blood pressure,
08:44:42 15 and in cardiovascular pharmacology. That led to an
08:44:47 16 interesting interaction with Dr. Michael E. DeBakey,
08:44:54 17 who is a cardiovascular surgeon, and at the time
08:44:58 18 President of Baylor College of Medicine.

08:45:01 19 My senior mentor was recruited by
08:45:05 20 Dr. DeBakey. I was the most junior member of the
08:45:09 21 team, and was similarly recruited to come to Houston
08:45:14 22 to do hypertension -- high blood pressure -- and
08:45:19 23 cardiovascular pharmacology research at the Baylor
08:45:22 24 College of Medicine. And that was really my primary
08:45:24 25 focus for a number of years.

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08:45:29 1 Dr. DeBakey subsequently recruited
08:45:32 2 me to be his physician, and the primary reason for
08:45:39 3 that was that he was getting into advanced age.
08:45:41 4 With the advanced age, as most everybody here now
08:45:44 5 knows -- although at the time it was -- kept it
08:45:50 6 highly secretive, but as everybody knows he
08:45:53 7 developed a DeBakey Type II aortic aneurysm. He
08:45:59 8 asked me and his close surgical colleague,
08:46:02 9 Dr. George P. Noon to manage that problem.

08:46:07 10 Ultimately, he became the oldest
08:46:10 11 human ever to have a DeBakey Type II aneurysm repair
08:46:14 12 performed. As a result of that -- I reflect back on
08:46:21 13 all of the decisions that went into that, but one of
08:46:23 14 them resulted in we were able to -- he was able to
08:46:27 15 survive to 99 years and 10 months and receive the
08:46:35 16 Congressional Gold Medal.

08:46:35 17 Q. So you actually were Dr. DeBakey's physician?

08:46:38 18 A. Yes.

08:46:39 19 Q. So did your focus then change -- so what is
08:46:42 20 your focus right now in the patients you treat and
08:46:46 21 what you are doing at Baylor?

08:46:47 22 A. Comprehensive primary care from the perspective
08:46:51 23 of internal medicine.

08:46:53 24 Q. Okay. And do you treat patients with cognitive
08:46:55 25 impairments?

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08:46:56 1 **A.** Yes.

08:46:56 2 **Q.** Could you give us a ballpark idea of how many
08:46:59 3 patients you have right now that, you know, would
08:47:01 4 fall into that category?

08:47:03 5 **A.** Well, I can give you a statistic, which one of
08:47:06 6 my colleagues that has currently left his post at
08:47:10 7 Harvard and now doing research in Arizona -- it's
08:47:14 8 generally held that about one out of four Americans
08:47:18 9 has cognitive impairment. And that --

08:47:22 10 MR. LANGSTON: Objection.

08:47:23 11 THE COURT: Okay. What's the
08:47:24 12 objection?

08:47:25 13 MR. LANGSTON: Again, this witness is
08:47:26 14 -- he's giving statistics about how many Americans
08:47:29 15 have cognitive impairment. Again, there's no notice
08:47:31 16 of this. We've never been told Dr. Pool was going
08:47:34 17 to testify as an expert. To the extent they're
08:47:36 18 trying to sneak in statistics about cognitive
08:47:39 19 impairment I don't think is relevant to this
08:47:41 20 witness.

08:47:42 21 THE COURT: Objection overruled. I
08:47:43 22 think the witness is giving the Court his background
08:47:45 23 on treat older patients. I understand your
08:47:48 24 objection. Overruled.

08:47:49 25 You may continue.

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08:47:50 1 MR. VARNADO:

08:47:51 2 Q. Please go ahead, Doctor.

08:47:52 3 A. I would say that my personal, professional
08:47:55 4 experience pretty much mirrors that. So if you look
08:47:58 5 at my patient population that are aged 80 and older,
08:48:03 6 that patient population -- about a fourth of those
08:48:07 7 patients have some sort of cognitive impairment.

08:48:09 8 Q. Okay. We'll speak about that in a moment.

08:48:12 9 Dr. Pool, does Baylor provide legal counsel to
08:48:15 10 doctors like yourself who are asked to come testify
08:48:17 11 in court?

08:48:18 12 A. They provide legal counsel to us, period. The
08:48:23 13 -- the Associate General Counsel for Baylor is James
08:48:28 14 Banfield. Mr. Banfield and I go back probably
08:48:36 15 literally four decades. He is responsible for risk
08:48:39 16 management. He's responsible for legal issues that
08:48:44 17 are beyond our expertise, training.

08:48:53 18 Q. Did you and I meet on a couple of occasions
08:48:55 19 with Mr. Banfield's consent prior to you coming to
08:48:59 20 testify today?

08:48:59 21 A. Yes, that is correct.

08:49:00 22 Q. Did you also submit a letter to Mr. Brockman's
08:49:02 23 counsel, Ms. Keneally in January of 2020, concerning
08:49:07 24 Mr. Brockman's cognitive impairment?

08:49:09 25 A. Yes, I did.

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08:49:10 1 Q. Did you understand that that letter would be
08:49:13 2 included in a submission to the Department of
08:49:15 3 Justice prior to Mr. Brockman being indicted?

08:49:18 4 A. Yes.

08:49:19 5 Q. And in general, did -- what did that -- what
08:49:22 6 did you state in that letter, in terms of just
08:49:24 7 providing information regarding Mr. Brockman's
08:49:26 8 current health status at that time?

08:49:29 9 A. I -- the primary focus of the letter, as I
08:49:32 10 remember it -- and I have not read it since I
08:49:35 11 submitted it -- but, um, it was that Mr. Brockman
08:49:39 12 had -- from the time I saw him October 2018, had
08:49:46 13 cognitive impairment.

08:49:47 14 Q. Okay. And at the time of that submission of
08:49:51 15 the letter, and that was subsequently turned over to
08:49:53 16 the IRS, did you become aware that the Defense had
08:49:55 17 executed HIPAA waivers to allow you to talk to
08:49:59 18 government agents or lawyers in that period of time
08:50:01 19 before Mr. Brockman's indictment?

08:50:03 20 A. Yes. I was aware of that. Then I was
08:50:09 21 subsequently made aware that that waiver was
08:50:11 22 withdrawn, and I was henceforth to discontinue
08:50:18 23 communication with the Denver Office of the
08:50:21 24 Department of Justice.

08:50:22 25 Q. Okay. And let's break that down. Because

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08:50:24 1 while the HIPAA waivers were in place, before
08:50:29 2 Mr. Brockman was indicted, did anyone try to contact
08:50:32 3 to speak about Mr. Brockman's health?

08:50:34 4 **A.** Yes.

08:50:34 5 **Q.** Okay. I'm going to show you what's just been
08:50:41 6 marked for identification as Defense Exhibit 78. I
08:50:44 7 want to make sure we get the timing right. Again,
08:51:13 8 showing for identification Defense Exhibit 78. This
08:51:17 9 is to see if this refreshes your recollection as to
08:51:19 10 the time the IRS had reached out to you on October
08:51:25 11 22, 2020?

08:51:26 12 **A.** Yes, Ryan Ricky (phonetic) is a very familiar
08:51:29 13 name to me from communications and by e-mail.

08:51:31 14 **Q.** I'll take that back from you just once you got
08:51:34 15 a chance to look at it.

08:51:35 16 **A.** Okay.

08:51:36 17 **Q.** If Mr. Brockman's indictment became public on
08:51:39 18 October 15th of 2020, did this communication come
08:51:42 19 after Mr. Brockman was actually indicted?

08:51:52 20 **A.** Yes, October 22, 2020.

08:51:54 21 **Q.** You mentioned HIPAA waivers being retracted.
08:51:56 22 Did that occur after Mr. Brockman was indicted --
08:51:59 23 you at least became aware of it after?

08:52:01 24 **A.** I became aware of that, but I don't know the
08:52:04 25 exact date and time of withdrawal of waiver.

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08:52:07 1 Q. Okay. Prior to -- did you talk with any
08:52:15 2 lawyers from the Department of Justice at all in
08:52:18 3 this time period?

08:52:19 4 A. No, not at all. Ryan Ricky was my only
08:52:22 5 contact.

08:52:23 6 Q. Okay. Ultimately, because the HIPAA waivers
08:52:27 7 had been taken down you didn't have a substantive
08:52:30 8 conversation with him about Mr. Brockman's health
08:52:32 9 condition?

08:52:33 10 A. Correct.

08:52:33 11 Q. So after -- have there been more recent
08:52:37 12 inquiries about trying to contact you to speak with
08:52:41 13 you in advance of your testimony by the Department
08:52:43 14 of Justice, as far as you know?

08:52:45 15 A. Yes. Within the past few weeks, a different
08:52:51 16 special agent -- not Ryan Ricky -- different special
08:52:55 17 agent contacted me by telephone. I spoke to him by
08:53:02 18 telephone and by -- and there was an e-mail -- I
08:53:06 19 gave him my e-mail address so he could actually
08:53:09 20 e-mail me.

08:53:09 21 Q. Okay. But no substantive conversations about
08:53:12 22 Mr. Brockman's health?

08:53:13 23 A. Oh, no. Nothing whatsoever.

08:53:15 24 Q. Was that on advice of your counsel at Baylor?

08:53:18 25 A. Yes, James Banfield.

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08:53:19 1 Q. Do you know if that advice was impacted by
08:53:22 2 filings in this case where the Government is
08:53:25 3 suggesting doctors at the Baylor College of Medicine
08:53:27 4 were conspiring to give a false diagnosis of
08:53:29 5 Mr. Brockman?

08:53:30 6 MR. LANGSTON: Objection. Does this
08:53:31 7 witness know what his attorney's advice is based on?
08:53:36 8 Speculation.

08:53:37 9 THE COURT: I'll allow the question.
08:53:40 10 It is speculation. And then if he says, "Yes," then
08:53:44 11 you get to cross-examine him on it. So objection
08:53:46 12 overruled.

08:53:48 13 You can re-ask the question.

08:53:51 14 MR. VARNADO:

08:53:51 15 Q. If you know. Do you know if Mr. Banfield's
08:53:55 16 advice was impacted by the pleadings in this case
08:53:57 17 where the Government suggested Baylor College of
08:54:00 18 Medicine doctors provided false diagnoses in support
08:54:03 19 of Mr. Brockman?

08:54:04 20 A. Mr. Banfield so stated to me on the phone --

08:54:08 21 THE COURT: That's hearsay. So
08:54:10 22 objection's sustained.

08:54:12 23 MR. VARNADO:

08:54:12 24 Q. In any event, have you spoken to government
08:54:17 25 lawyers prior to today?

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08:54:19 1 **A.** No.

08:54:21 2 **Q.** All right. We mentioned -- you mention that

08:54:23 3 you have been Mr. Brockman's physician since 2018.

08:54:26 4 Um, do you recall who referred Mr. Brockman to you?

08:54:30 5 **A.** Yes, one of my colleagues in the Department of

08:54:38 6 Urology at Baylor, Dr. Seth Lerner, L-E-R-N-E-R.

08:54:43 7 **Q.** Okay. I'm going to show you what's been marked

08:54:45 8 for identification as Defense Exhibit 79. Just take

08:55:02 9 a minute to look at that. Do you recognize what

08:55:05 10 that record is from the Baylor College of Medicine?

08:55:12 11 **A.** This is a visit with diagnoses and other

08:55:19 12 relevant issues for -- with Dr. Seth Lerner on

08:55:24 13 September 11, 2018.

08:55:33 14 **Q.** Ask you to look at the fifth page of the

08:55:37 15 document. The Bates stamp at the bottom is

08:55:43 16 BCM-1133. So, Dr. Pool, is this a record that's

08:55:46 17 familiar to you in terms of your work at the Baylor

08:55:50 18 College of Medicine as to what the patient visit

08:55:51 19 printout looks like?

08:55:53 20 **A.** Yes, it is.

08:55:54 21 **Q.** Okay. Is this a -- you mentioned this was from

08:55:57 22 the visit Mr. Brockman had with Dr. Lerner on

08:56:01 23 September 11th of 2018; correct?

08:56:03 24 **A.** Yes.

08:56:03 25 **Q.** Okay.

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08:56:05 1 MR. VARNADO: Move to admit Defense
08:56:09 2 Exhibit 79.

08:56:09 3 MR. LANGSTON: No objection.

08:56:10 4 THE COURT: Without objection, Defense
08:56:13 5 Exhibit 79 is admitted.

08:56:14 6 MR. VARNADO:

08:56:14 7 Q. And I'm just showing you on the page I asked
08:56:16 8 you to turn to here in this note. In this note,
08:56:20 9 does it say on the bottom of the page that ends in
08:56:23 10 1133 that, "The patient was distressed by change of
08:56:29 11 health and sense of wellbeing, and I offered to set
08:56:32 12 up a consultation with Dr. Pool, and he would like
08:56:34 13 to do this"?

08:56:37 14 Is that consistent with your memory
08:56:38 15 Dr. Lerner ultimately did contact you and made the
08:56:41 16 referral of Mr. Brockman to your care?

08:56:44 17 A. Yes.

08:56:44 18 Q. Did you have an understanding from Dr. Lerner
08:56:50 19 who was actually managing Mr. Brockman's care at
08:56:53 20 that time?

08:56:54 21 A. Could you rephrase the question? Are you
08:56:57 22 asking me about comprehensive care or --

08:57:02 23 Q. Let me ask this. Did you know who -- when you
08:57:05 24 had communication with Dr. Lerner about referring
08:57:09 25 Mr. Brockman, did you get an understanding as to

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08:57:12 1 whether or not he had a general practitioner at that
08:57:14 2 time?

08:57:16 3 **A.** My understanding from Dr. Seth Lerner was that
08:57:20 4 there was actually nobody quarterbacking his care.
08:57:24 5 It was basically segregated into categories of
08:57:29 6 specialists, but knowing that actually had a
08:57:32 7 comprehensive overview.

08:57:33 8 **Q.** Is Dr. Lerner actually a patient of yours as
08:57:37 9 well?

08:57:37 10 **A.** He is.

08:57:42 11 **Q.** At the time of his referral to you what, if
08:57:45 12 anything, did you know about Mr. Brockman?

08:57:47 13 **A.** Nothing, other than Dr. Lerner had -- it had
08:57:53 14 indicated that at his level of medical training,
08:58:01 15 experience and knowledge that Mr. Brockman had
08:58:06 16 un-diagnosed -- un-managed issues that needed to be
08:58:14 17 addressed.

08:58:14 18 **Q.** Okay. At the time of the referral from
08:58:17 19 Dr. Lerner, were you aware of any connections
08:58:19 20 Mr. Brockman had to the Baylor College of Medicine?

08:58:21 21 **A.** No.

08:58:21 22 **Q.** At the time of the referral, were you aware
08:58:24 23 whether or not Mr. Brockman had ever served on the
08:58:26 24 board of the Baylor College of Medicine?

08:58:28 25 **A.** No.

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08:58:28 1 Q. Were you aware of any philanthropic donations
08:58:33 2 to the Baylor College of Medicine that may have been
08:58:35 3 connected to Mr. Brockman at the time of his
08:58:37 4 referral?

08:58:37 5 A. No.

08:58:38 6 Q. Okay. At the time of his referral, were you
08:58:42 7 aware of any donations Mr. Brockman may have made to
08:58:45 8 research projects headed by Seth Lerner?

08:58:49 9 A. No.

08:58:49 10 Q. Have you heard of an entity called the A.
08:58:55 11 Eugene Brockman Charitable Trust?

08:58:55 12 A. No.

08:58:56 13 Q. At the time of Mr. Brockman's referral, were
08:58:59 14 you aware that an entity called the A. Eugene
08:59:05 15 Brockman Charitable Trust had made a \$25 million
08:59:07 16 donation to the Baylor College of Medicine in 2010?

08:59:10 17 A. No.

08:59:10 18 Q. Did Mister or Mrs. Brockman ever raise that
08:59:13 19 donation to you in the first visit you had?

08:59:15 20 A. No.

08:59:15 21 Q. What about any subsequent visits?

08:59:17 22 A. No.

08:59:17 23 Q. Do you recall the date that you first examined
08:59:21 24 Mr. Brockman? I'll take that back from you.

08:59:25 25 A. On or about -- well, it was October 2018. I

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08:59:31 1 don't remember the exact day.

08:59:33 2 Q. Okay. I won't make this a memory test. I will
08:59:36 3 mark for identification Defense Exhibit 80.

09:00:07 4 MR. VARNADO: May I approach, Your
09:00:08 5 Honor?

09:00:08 6 THE COURT: You may.

09:00:09 7 MR. VARNADO:

09:00:09 8 Q. Again, Defense Exhibit 80. Just ask if you
09:00:13 9 recognize what those documents are.

09:00:15 10 A. Yes. These are copies of my notes.

09:00:22 11 Q. Notes from what?

09:00:23 12 A. Visits with Bob Brockman, dated October
09:00:29 13 the 15th, 2018, through June 14, 2021.

09:00:33 14 Q. Okay. Move to admit Defense Exhibit 80.

09:00:36 15 THE COURT: Any objection?

09:00:38 16 MR. LANGSTON: No objection, Your
09:00:39 17 Honor.

09:00:39 18 THE COURT: Without objection, Defense
09:00:40 19 Exhibit's 80 is admitted.

09:00:42 20 MR. VARNADO:

09:00:43 21 Q. Okay. Dr. Pool, I want you to feel free to
09:00:45 22 refer to any of these notes at any time if you feel
09:00:49 23 like you need to during the examination we're
09:00:50 24 talking about today. I just wanted to put this up
09:00:53 25 here to orient you on time.

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09:00:54 1 You can see on the screen in front of
09:00:57 2 you -- on that small screen there.
09:00:59 3 **A.** I see it.
09:00:59 4 **Q.** Does that left-hand column contain the dates of
09:01:04 5 the visits you've had with Mr. Brockman?
09:01:05 6 **A.** That is correct.
09:01:06 7 **Q.** Okay.
09:01:07 8 **A.** And these, by the way, are in my handwriting,
09:01:14 9 entered by me.
09:01:15 10 **Q.** Very good. You mentioned Mr. Brockman was
09:01:18 11 referred over to the Comprehensive Healthcare
09:01:23 12 Clinic. You know, is there a particular focus or
09:01:27 13 emphasis that the clinic has in terms of the types
09:01:29 14 of patients it treats in terms of their medical
09:01:33 15 infirmities, or is it a full-service practice of
09:01:38 16 treating different ailments?
09:01:39 17 **A.** The latter is correct. It's a full-service
09:01:41 18 clinic.
09:01:42 19 **Q.** And is this Comprehensive Healthcare Clinic
09:01:47 20 something unique to Baylor, or do other hospital
09:01:51 21 systems have something similar?
09:01:52 22 **A.** I don't know about other hospital systems, but
09:01:54 23 certainly medical schools.
09:01:55 24 **Q.** Can you give us some examples that you are
09:01:57 25 aware of?

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09:01:57 1 **A.** Obviously I'm very, very familiar with the
09:02:01 2 experience of Duke -- which was my original
09:02:04 3 training -- um, and each of the other academic
09:02:09 4 institutions in the Texas Medical Center. There are
09:02:16 5 special units at hospital-based university
09:02:22 6 affiliated. MD Anderson would be a good example,
09:02:25 7 and my counterpart there for years and years was
09:02:29 8 Dr. John Stroehlein.

09:02:32 9 We tend these entities -- we tend
09:02:35 10 to partner to keep the logistics and the
09:02:39 11 comprehensive and in-depth evaluation of patients on
09:02:43 12 track.

09:02:44 13 **Q.** Okay. So this is not something that's unique
09:02:46 14 to the Baylor College of Medicine?

09:02:48 15 **A.** It is not.

09:02:48 16 **Q.** And are Comprehensive Healthcare Clinic
09:02:52 17 patients required to make a donation to Baylor
09:02:54 18 College of Medicine?

09:02:54 19 **A.** Not at all.

09:02:55 20 **Q.** Okay. So again, you can refer to your notes if
09:02:58 21 you want, or we can just go from your memory, but
09:03:00 22 what's your recollection of the symptoms
09:03:03 23 Mr. Brockman presented with and reported to you
09:03:05 24 during his -- your first examination? I think the
09:03:18 25 oldest notes are in the back, Dr. Pool, if that's

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09:03:22 1 helpful.

09:03:22 2 **A.** Correct. It's usually my custom to ask
09:03:26 3 patients to start where they want so that I can see
09:03:29 4 what they have sort of as their priorities. The
09:03:34 5 first thing Mr. Brockman reported to me was that he
09:03:36 6 had atrial fibrillation. The atrial fibrillation
09:03:40 7 started three years earlier in the third quarter.

09:03:43 8 And then he gave me the details of
09:03:45 9 how that was evaluated, how it was treated, and that
09:03:48 10 he was on medication to control the speed with which
09:03:53 11 the atrial fibrillation would drive the heart rate,
09:03:58 12 and also anticoagulation to avoid the possibilities
09:04:02 13 of thrombotic stroke.

09:04:04 14 **Q.** And what are some of the other maladies that
09:04:07 15 Mr. Brockman presented with?

09:04:09 16 **A.** He went and -- then to a second priority, which
09:04:13 17 he described as being "slowed down" for two years.
09:04:21 18 And then, specifically, in talking through and
09:04:24 19 soliciting additional comments, we then focused in
09:04:30 20 on how this was translated into activities of daily
09:04:35 21 living.

09:04:36 22 Whenever I put in my note
09:04:40 23 quotation, then that literally is a quote. I mean,
09:04:44 24 the syntax, the words -- everything are exactly what
09:04:47 25 the patient said. So he told me, "My memory is

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09:04:54 1 failing more."

09:04:54 2 Proper nouns have decreased for the
09:04:57 3 past two years, so proper nouns -- especially the
09:05:01 4 names of the individuals. I learned that was really
09:05:08 5 striking for an interesting reason, and that was
09:05:12 6 that when we got into his business behavior as an
09:05:19 7 executive that he tended to remember the names of
09:05:24 8 literally hundreds and hundreds of his employees and
09:05:26 9 had a reputation within his company of actually
09:05:30 10 being able to address individuals by their name,
09:05:33 11 having not seen them very often.

09:05:35 12 MR. LANGSTON: Could we get some
09:05:36 13 foundation for whether that statement came from
09:05:40 14 Mr. Brockman or whether he learned that somewhere
09:05:42 15 else?

09:05:42 16 THE COURT: I mean, I think that's a
09:05:44 17 fair question.

09:05:46 18 Dr. Pool, where do you -- what's
09:05:47 19 the basis of that information about, um,
09:05:50 20 Mr. Brockman's memory regarding his employees and
09:05:55 21 work? Is that something he reported to you?

09:05:58 22 THE WITNESS: Judge, there are two
09:05:59 23 places that I can recall from that information.

09:06:05 24 First of all, at his annual
09:06:07 25 meetings he told me that he would personally sign

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09:06:13 1 certificates, and he said thousands of certificates.
09:06:21 2 And in that context, the reference was made that, in
09:06:23 3 fact, he knew who those people were and acknowledged
09:06:26 4 them. That's one.

09:06:27 5 And then, the other one was a
09:06:29 6 recall of that from Jason, the Defense attorney,
09:06:32 7 reminding me that indeed that had been seen and
09:06:37 8 reported to the defense team that that had occurred.

09:06:41 9 THE COURT: The last part, you know, is
09:06:44 10 hearsay, but the first part is acceptable.

09:06:46 11 MR. VARNADO: I wasn't trying to elicit
09:06:48 12 that obviously, Judge.

09:06:50 13 THE COURT: He was trying to answer the
09:06:51 14 question, so not a problem. So I think, Counsel,
09:06:54 15 he's laid a foundation as to the knowledge without
09:06:57 16 the part about coming from Defense Counsel.

09:07:00 17 MR. LANGSTON: I don't want to
09:07:01 18 interrupt. Just clarify if he's -- if he's learning
09:07:04 19 from Mr. Brockman, we understand. But if he's
09:07:06 20 learning it, obviously, from Defense Counsel we have
09:07:08 21 an issue.

09:07:08 22 THE COURT: Right. So the Court won't
09:07:10 23 consider anything the witness learned from Defense
09:07:13 24 Counsel.

09:07:13 25 MR. VARNADO: We'll stipulate to that.

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09:07:15 1 Q. Anything else, Dr. Pool -- I want to -- I
09:07:19 2 guess, actually when we talk about that first visit,
09:07:21 3 did Mr. Brockman make statements to you, or present
09:07:26 4 to you in a way about -- that reflected on his own
09:07:30 5 view of how he was performing as an executive at
09:07:35 6 Reynolds and Reynolds?

09:07:35 7 A. Declining.

09:07:36 8 Q. Okay. But did he give you any impression he
09:07:40 9 was still very much in charge? And did any of that
09:07:42 10 seem consistent or inconsistent with what you were
09:07:46 11 observing?

09:07:46 12 A. I would say that it was very clear that his
09:07:49 13 demeanor was that of many other chairmen and CEOs
09:07:57 14 that I've experienced over the decades.

09:07:59 15 Q. In what regard?

09:08:00 16 A. Just a -- a take-charge, in-charge persona that
09:08:07 17 goes with that position. And Mr. Brockman
09:08:12 18 maintained that.

09:08:13 19 Q. Were there any discrepancies between
09:08:16 20 Mr. Brockman's, you know, self-assessment
09:08:19 21 presentation and that persona, and what you were
09:08:22 22 observing as a trained clinician in your analysis of
09:08:26 23 where he was with his different maladies?

09:08:28 24 A. The depth of reporting of details when I would
09:08:35 25 ask questions made me concerned during the very

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09:08:40 1 first visit that there was impairment of short-term
09:08:45 2 memory. I wasn't getting the kind of -- of -- of,
09:08:50 3 um, responses that I would expect, nor -- nor was --
09:08:56 4 nor was the entire content of the response what I
09:08:59 5 would expect.

09:09:02 6 So that -- that made me suspicious.
09:09:05 7 And then, of course, the other thing that -- that
09:09:07 8 obviously add -- would add to that suspicion was the
09:09:12 9 physical persona of the things that made me
09:09:19 10 concerned there was a neurodegenerative process
09:09:21 11 going on.

09:09:21 12 Q. What were those physical things of the persona
09:09:27 13 you mentioned that gave you that concern?

09:09:29 14 A. The first thing -- even without moving, or
09:09:31 15 examining, or asking for specific physical tasks --
09:09:37 16 the hypomimia, where the face lacks expression and
09:09:47 17 it lacks movement of the small muscles of the face
09:09:51 18 so that the face has some expression. And in
09:09:56 19 neurology, we refer to that as hypomimia.

09:10:01 20 Q. And then --

09:10:01 21 A. That was -- that was probably one of the most
09:10:04 22 striking things about our early conversations.

09:10:07 23 Q. What does the hypomimia mean to you as a
09:10:10 24 clinician and indicative of other issues going on
09:10:14 25 cognitively?

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09:10:15 1 **A.** If -- first of all, it means that you better be
09:10:18 2 --

09:10:18 3 MR. LANGSTON: Objection. Your Honor,
09:10:20 4 if this witness wants to testify as to the symptoms
09:10:23 5 he observed, he's a fact-witness. If he's going to
09:10:27 6 testify as to based on these symptoms, "I believe he
09:10:32 7 has a neurocognitive disease," I think that is
09:10:35 8 expert testimony that was not noticed, and we were
09:10:37 9 not given a report with respect to that.

09:10:39 10 THE COURT: Response?

09:10:40 11 MR. VARNADO: This is his treating
09:10:42 12 physician that has been with him since 2018. They
09:10:44 13 have all of these medical records that show exactly
09:10:46 14 what his diagnosis is. He's explaining the care he
09:10:49 15 provided for Mr. Brockman. We're offering him as a
09:10:52 16 fact witness in that regard.

09:10:53 17 MR. LANGSTON: Again, we have no
09:10:54 18 objection to the things he observed and provided.
09:10:57 19 But if he's going to say, "Because I observed
09:10:59 20 hypomimia," and "Because I observed this, I believe
09:11:01 21 he has a neurodegenerative disease," that's expert
09:11:04 22 testimony.

09:11:04 23 THE COURT: Okay. But -- but this
09:11:07 24 falls under the Section 702, he is a fact witness
09:11:11 25 that's providing expert testimony based on his

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09:11:14 1 observations. I know it's a little bit technical,
09:11:17 2 but this is within the realm of his experience and
09:11:19 3 observations.

09:11:20 4 So I understand your objection.
09:11:22 5 I'm going to allow it for now, and then if you find
09:11:25 6 that there's something that is so far outside of
09:11:29 7 this witness's care of Mr. Brockman, then make the
09:11:33 8 objection again. But at this point, I'm going to
09:11:35 9 overrule on the objection and allow you to go
09:11:37 10 forward.

09:11:37 11 MR. VARNADO: Thank you, Your Honor.

09:11:38 12 Q. And you were going to explain, Dr. Pool, what
09:11:40 13 the hypomimia meant to you in terms of your
09:11:43 14 assessment of Mr. Brockman?

09:11:44 15 A. Well, the first thing is that is a physical
09:11:50 16 change that -- and there's -- there's a -- another
09:11:56 17 term that is used that is not a scientific term, but
09:12:01 18 it's called mask faces. So that if the person has
09:12:06 19 the same appearance throughout everything -- and for
09:12:11 20 all of us when we're interacting, you know, your
09:12:14 21 face is changing. There's -- something is
09:12:18 22 happening, but that was not there.

09:12:19 23 And immediately when we see that
09:12:22 24 because of background -- I have quite a bit of
09:12:25 25 neurology training at the internal medicine level --

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09:12:31 1 you sort of think, "Well, I wonder how he's going to
09:12:34 2 walk," and "I wonder what his muscle tone is going
09:12:37 3 to be, if I'm going to find cogwheeling, tremor, or
09:12:42 4 if I'm going to find impaired handwriting" -- all of
09:12:45 5 the other things that go with Parkinson's disease,
09:12:47 6 because that's where we see most of that.

09:12:49 7 And of course when I saw him, he
09:12:52 8 had not been diagnosed with Parkinson's disease, but
09:12:56 9 that just went immediately to the top of my
09:12:58 10 differential, and I referred him to one of my
09:13:02 11 colleagues who's a world authority in Parkinson's.

09:13:04 12 Q. Okay. We're going to get to that in just a
09:13:06 13 moment.

09:13:07 14 Your Honor, if I can approach?

09:13:08 15 THE COURT: Oh, yes.

09:13:10 16 MR. VARNADO:

09:13:10 17 Q. I'm going to show you what's marked for
09:13:12 18 identification as Defense Exhibit 81. Do you
09:13:17 19 recognize this document, Dr. Pool?

09:13:20 20 A. Yeah, this is the day that I saw Mr. Brockman
09:13:23 21 for his initial physical exam.

09:13:27 22 Q. And again -- I'll move to admit Defense
09:13:31 23 Exhibit 81.

09:13:31 24 THE COURT: Any objection?

09:13:33 25 MR. LANGSTON: No objection.

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09:13:34 1 THE COURT: Okay. Without objection,
09:13:36 2 Defense Exhibit 81 is admitted.

09:13:39 3 MR. VARNADO:

09:13:39 4 Q. Dr. Pool, I just wanted to sort of focus on the
09:13:43 5 visit diagnoses and that top line. What -- what was
09:13:46 6 your conclusion after at least as an initial
09:13:50 7 diagnoses of Mr. Brockman after your visit in
09:13:52 8 mid-October of 2018?

09:13:53 9 A. Well, the thing that was -- obviously I was
09:13:59 10 impressed enough that I put it as the number one
09:14:02 11 diagnosis -- progressive cognitive disfunction.
09:14:06 12 That, also known as minimal cognitive disfunction,
09:14:10 13 is the -- if you will -- the frontrunner of changes
09:14:15 14 in higher cortical function that are associated with
09:14:22 15 -- basically neurodegenerative processes on all
09:14:25 16 aspects of memory, executive function, et cetera.

09:14:28 17 Then the second thing is ataxia,
09:14:35 18 which basically says that when I asked Mr. Brockman
09:14:38 19 to walk, then he could not walk appropriately and he
09:14:44 20 had a gait, a walking disturbance that we call
09:14:50 21 ataxia. Ataxia is your -- you are unable to walk
09:14:57 22 with a normal base of gait. You are unable to walk
09:15:02 23 in tandem, which most people that are in the legal
09:15:06 24 profession recognize because that's the gait test
09:15:10 25 that the law enforcement uses to look for

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09:15:14 1 intoxication from alcohol and drugs.

09:15:17 2 We add one feature to ours. I

09:15:20 3 always make people walk forward, and then I have

09:15:23 4 them stop and I have them do it backwards.

09:15:25 5 Backwards is usually more difficult, and picks up

09:15:28 6 people that are not abnormal going forward.

09:15:31 7 Q. What's the significance of the ataxia diagnosis

09:15:38 8 in connection with Mr. Brockman's care at that time?

09:15:39 9 A. If you then start putting all of the pieces

09:15:41 10 together, that's one of the things that went through

09:15:44 11 my mindset when I saw the hypomimia, and I was aware

09:15:48 12 that I was not getting an in-depth understanding, an

09:15:56 13 in-depth awareness, and an in-depth content of

09:16:00 14 answers to our discussion. It was all a part of

09:16:06 15 what I thought was a neurodegenerative process.

09:16:09 16 Which you can say, "Well, if you

09:16:11 17 thought it was Parkinson's disease, why didn't you

09:16:12 18 put it down?"

09:16:13 19 It's probably better for a

09:16:18 20 referring physician to -- who is going to refer to a

09:16:21 21 specialist to say, "Refer with a set of symptoms.

09:16:25 22 Refer with a set of findings," and let the

09:16:29 23 specialist tell you, "Yes, in all medical reasonable

09:16:35 24 probability this patient has..."

09:16:37 25 Q. Okay. We'll talk about Dr. Jankovic, and a

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09:16:42 1 referral you made out in connection with these
09:16:44 2 observations. But on the scene here, Defense
09:16:47 3 Exhibit 80, page ending in Bates stamp 5067, were
09:16:51 4 there sort of -- what does this sheet represent in
09:16:54 5 what happened with Mr. Brockman's care after this
09:17:01 6 first examination?

09:17:02 7 **A.** Any time you suspect there's a
09:17:04 8 neurodegenerative process, one of the most important
09:17:06 9 go-to imaging test is an MRI brain scan.

09:17:09 10 **Q.** Okay.

09:17:10 11 **A.** And then, because I was concerned about
09:17:14 12 cognitive impairment, I referred him to Dr. Michele
09:17:20 13 York for comprehensive neuropsychological testing so
09:17:24 14 I could see exactly what the magnitude, and also
09:17:27 15 what the types of impairment were.

09:17:31 16 **Q.** Okay. Then I think there's two other items on
09:17:34 17 here. Were these also undertaken after this
09:17:38 18 particular visit, if you recall?

09:17:40 19 **A.** Yes. He was due for a colonoscopy, and he was
09:17:47 20 also due for really comprehensive testing.

09:17:50 21 **Q.** Comprehensive like physical exams?

09:17:53 22 **A.** No, no, no, no, no, no, no, no. Lab
09:17:57 23 diagnostics. And for us, that word really takes on
09:18:00 24 a very, very special sequence, and especially when
09:18:04 25 you are thinking about cognitive impairment you need

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09:18:07 1 to look at a wide array of things. So in -- so in
09:18:12 2 round terms that's about 40 different tests.

09:18:15 3 Q. Okay. Do you recall if Mr. Brockman attended
09:18:17 4 that first visit with you by himself --

09:18:20 5 A. Oh, no.

09:18:20 6 Q. -- or was he accompanied with anyone?

09:18:22 7 A. No, I've never seen Mr. Brockman by himself.

09:18:24 8 Q. Who was with him that first visit, if you
09:18:27 9 recall?

09:18:27 10 A. Mrs. Brockman, Dorothy Brockman.

09:18:33 11 Q. After this initial visit and the conclusions we
09:18:35 12 saw you draw, you had mentioned you were going to
09:18:37 13 make a referral in connection with the
09:18:41 14 neurocognitive disorders or impairments you were
09:18:45 15 seeing. Who did you make the referral to?

09:18:47 16 A. To Dr. Michele York, Ph.D., Department of
09:18:51 17 Neurology at Baylor College of Medicine, the head of
09:18:55 18 Neuropsychological Testing.

09:18:56 19 Q. Okay. Before we get to Dr. York -- I'm going
09:18:59 20 to take these in order -- was there a referral made
09:19:01 21 to a Dr. Jankovic?

09:19:06 22 A. Jankovic.

09:19:09 23 Q. Dr. Jankovic?

09:19:12 24 A. Yes. That was for the suspicious of
09:19:14 25 Parkinson's.

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09:19:14 1 Q. Do you recall that Mr. Brockman was examined by
09:19:18 2 Dr. Jankovic?

09:19:19 3 A. Yes.

09:19:20 4 Q. Do you recall what Dr. Jankovic's conclusion
09:19:23 5 was? I don't want to -- excuse me -- go through all
09:19:26 6 of the records, but in general can you give an
09:19:28 7 understanding of what he assessed?

09:19:30 8 A. He inferred from his level of internationally
09:19:36 9 recognized expertise that Mr. Brockman had
09:19:40 10 Parkinson's disease. He was -- and he put him on
09:19:52 11 drug therapy -- started him on drug therapy. Then I
09:20:00 12 got a chance to see Mr. Brockman and follow up after
09:20:03 13 that drug therapy had been established.

09:20:05 14 Q. Okay. And just the timeline, I think that
09:20:10 15 takes us into 2019. Is that consistent with your
09:20:12 16 memory of when --

09:20:13 17 A. Yes.

09:20:14 18 Q. -- Dr. Jankovic saw Mr. Brockman? Do you know
09:20:18 19 whether or not Mr. Brockman underwent a DaTscan?

09:20:27 20 A. That's from my memory, but it would be unusual
09:20:30 21 if he had not.

09:20:30 22 Q. Okay.

09:20:31 23 A. Because that would be very standard for
09:20:33 24 Dr. Jankovic.

09:20:34 25 Q. Okay. Ultimately, some therapy was started for

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09:20:40 1 Mr. Brockman by Dr. Jankovic --

09:20:41 2 **A.** Correct.

09:20:42 3 **Q.** -- in this 2019 time period?

09:20:44 4 **A.** Correct. I did not start any specific therapy
09:20:46 5 for Parkinson's disease. That is a professional
09:20:53 6 courtesy that you do not breach before your expert
09:20:56 7 colleagues.

09:20:56 8 **Q.** And Dr. Jankovic is at the Baylor College of
09:20:59 9 Medicine?

09:20:59 10 **A.** Yes.

09:21:00 11 **Q.** You mentioned he's sort of world-renowned?

09:21:03 12 **A.** Yes.

09:21:03 13 **Q.** What is his reputation in the community?

09:21:05 14 **A.** No, I mean he's -- I would say that,
09:21:10 15 internationally, if you asked for sort of the top 10
09:21:15 16 physicians, both from the perspective of clinical
09:21:19 17 and research in Parkinson's disease, that
09:21:22 18 Dr. Jankovic will be in that list time and time
09:21:24 19 again.

09:21:24 20 **Q.** Now, you also mentioned Dr. Michele York. What
09:21:29 21 is Dr. York's position at Baylor?

09:21:31 22 **A.** This will be a repeat, but she is a Ph.D.
09:21:35 23 specialist in neuropsychological testing who is the
09:21:39 24 Director -- head of the Division of
09:21:44 25 Neuropsychological Testing for the Department of

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09:21:47 1 Neurology at the Baylor College of Medicine.

09:21:47 2 Q. Okay. Why was it you felt Mr. Brockman should
09:21:50 3 go see Dr. York?

09:21:54 4 A. Objective testing would confirm my impression
09:22:00 5 that he had cognitive impairment. The other thing
09:22:06 6 that we always want to know from that testing -- and
09:22:11 7 I can use an analogy. It's like asking Dr. York,
09:22:17 8 "Map out the circuits of Mr. Brockman's brain with
09:22:20 9 your testing and tell me which circuits are
09:22:26 10 impaired, which are preserved, and which are most
09:22:28 11 impaired, and what is the pattern likely to
09:22:32 12 represent in terms of the cause of impairment?"

09:22:36 13 Q. And I take it that's Dr. York's area of
09:22:39 14 expertise, as opposed to yours -- the actual
09:22:43 15 neurocognitive testing, and you relied on her for
09:22:45 16 that?

09:22:45 17 A. Absolutely.

09:22:46 18 Q. Now, do you recall that Dr. York's initial exam
09:22:50 19 was on or about, you know, sometime in March of
09:22:53 20 2019; does that sound about right?

09:22:54 21 A. That would be very consistent with time lag and
09:22:57 22 just getting in, because this was a huge demand on
09:23:00 23 her time.

09:23:01 24 Q. And there's some reference in the records that
09:23:03 25 we've seen and put before the Court. I won't drag

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09:23:06 1 them out again, but that the referral to Dr. York
09:23:08 2 says "VIP, Dr. Pool patient" in some of the records?

09:23:13 3 **A.** Right.

09:23:13 4 **Q.** What does that mean, "VIP Dr. Pool patient"?

09:23:16 5 **A.** Just as that acronym that indicates in any
09:23:20 6 other part of our English-speaking society, "Very
09:23:25 7 important person," most -- I would say the majority
09:23:31 8 of the Comprehensive Healthcare Clinic patients fall
09:23:34 9 into that category.

09:23:35 10 **Q.** I mean are those, in general -- is that, in
09:23:38 11 general, a shorthand for the Comprehensive
09:23:40 12 Healthcare Clinic that that's the type of patient
09:23:42 13 associated with you --

09:23:43 14 **A.** Yes.

09:23:43 15 **Q.** -- and the records? Okay. Did you request
09:23:49 16 that Dr. York perform any specific tests, or did you
09:23:52 17 just turn the analysis over to her?

09:23:54 18 **A.** No, she has a very comprehensive, validated
09:24:00 19 battery of testing that she uses to come up with
09:24:03 20 results and conclusions.

09:24:04 21 **Q.** And are you aware that her analysis found that
09:24:07 22 Mr. Brockman's performance indicated dementia of
09:24:10 23 mild to moderate severity?

09:24:12 24 **MR. LANGSTON:** Objection. Hearsay.

09:24:15 25 **THE WITNESS:** That --

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09:24:15 1 THE COURT: One second.

09:24:17 2 Response? Because, he's not --
09:24:19 3 he's not testifying as an expert. An expert can
09:24:21 4 rely on hearsay. Talk to me about this one. What's
09:24:28 5 the response?

09:24:29 6 MR. VARNADO: Well, that he received
09:24:31 7 what Dr. York's workup of Mr. Brockman, and because
09:24:36 8 he's the general practitioner and general care
09:24:38 9 physician he received the report and understood what
09:24:40 10 it was. I'm going to ask --

09:24:42 11 THE COURT: Did he do something with
09:24:44 12 it?

09:24:44 13 MR. VARNADO: I'm going to ask how it
09:24:46 14 impacted moving Mr. Brockman's care going forward.

09:24:48 15 THE COURT: Okay.

09:24:49 16 MR. LANGSTON: And so our objection is
09:24:51 17 they're trying to assert it for the truth of the
09:24:52 18 matter asserted that's our objection. Just for what
09:24:54 19 this witness did next -- we want to make sure that's
09:24:57 20 the limitations.

09:25:00 21 THE COURT: I get it. Objection's
09:25:02 22 sustained with respect to introduced for the truth
09:25:05 23 of the matter asserted. However, I'm going to allow
09:25:08 24 you to provide the testimony for the sole purpose of
09:25:10 25 -- of showing what the doctor did based information

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09:25:15 1 he received.

09:25:19 2 MR. VARNADO: I'll restate the
09:25:20 3 question, and I understand the limitation, Your
09:25:20 4 Honor.

09:25:22 5 Q. Did you get an understanding of where Dr. York
09:25:24 6 came out with her analysis of Mr. Brockman? And
09:25:27 7 then we'll follow up with the question of what did
09:25:28 8 that cause you to do next in your treatment of
09:25:30 9 Mr. Brockman?

09:25:31 10 A. Yes. Number one, I received the report and the
09:25:37 11 -- and the -- the results of the report are as
09:25:39 12 stated in the report. And one -- one of the
09:25:48 13 concerns that comes out of that report would not be
09:25:51 14 in her area of expertise, necessarily, but it would
09:25:56 15 be that drug therapy -- if you have the combination
09:25:59 16 of dementia and Parkinson's disease, you in fact are
09:26:05 17 in a difficult area in terms of therapeutics.
09:26:14 18 Because there's a very traditional understanding
09:26:16 19 that some patients do not do well with Parkinson's
09:26:19 20 therapy as a result of their dementia.

09:26:25 21 Meaning that -- means that the
09:26:28 22 introduction of a drug by name Sinemet, which is
09:26:40 23 levodopa carbidopa -- L-E-V-O-D-O-P-A,
09:26:46 24 C-A-R-B-I-D-O-P-A -- there's a subset of people that
09:26:54 25 we are initially concerned about with levodopa

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09:27:00 1 carbidopa if they have dementia with Parkinson's
09:27:03 2 disease, and that -- because it can actually worsen
09:27:09 3 their behavioral aspects. You can develop a marked
09:27:15 4 behavioral alteration because of drug therapy.

09:27:18 5 Q. Okay. And so, just to stick with Dr. York, and
09:27:22 6 then I want to talk about any potential drug therapy
09:27:24 7 modifications, but did you -- I mean, do you have
09:27:28 8 any lack of confidence in Dr. York's ability or
09:27:31 9 skill in work as a neuropsychological?

09:27:34 10 A. Not at all.

09:27:36 11 Q. Did you also around the same time refer
09:27:38 12 Mr. Brockman to Dr. Melissa Yu?

09:27:42 13 A. Yes.

09:27:42 14 Q. Without -- we don't need to get into the
09:27:46 15 chapter and verse of the visits with Dr. Yu. What
09:27:48 16 was the purpose of having Dr. Yu assess
09:27:51 17 Mr. Brockman?

09:27:51 18 A. Dr. York is a testing physician. Dr. Melissa
09:28:00 19 Yu is in the Department of Neurology as a specialist
09:28:04 20 in Alzheimer's disease and all forms of dementia.

09:28:07 21 Q. Okay. Did she issue a report that you also
09:28:11 22 were able to examine in this matter?

09:28:12 23 A. Yes.

09:28:13 24 Q. Okay. Was it consistent with Dr. York's
09:28:15 25 opinion?

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09:28:17 1 A. To the -- I have not looked at Dr. Yu's report
09:28:20 2 in some time, so I presume so, but I can't say for a
09:28:23 3 fact.

09:28:24 4 Q. Okay. Fair enough. Okay. So you mentioned
09:28:26 5 this medication therapy. At some point were there
09:28:30 6 any modifications that -- to Mr. Brockman's
09:28:35 7 medications in connection with his Parkinson's?

09:28:37 8 A. Well, after initiating treatment for
09:28:42 9 Parkinson's disease, both Mister and Mrs. Brockman
09:28:46 10 came in for a clinic visit. And they were both
09:28:50 11 concerned about a change in Bob, that they felt was
09:28:56 12 "Being overmedicated."

09:28:59 13 That turned my attention to could
09:29:04 14 we be getting an adverse drug reaction in a
09:29:07 15 Parkinson's patient who is demented? And there --
09:29:12 16 their joint opinion -- their joint opinion, both
09:29:15 17 from Bob and Dorothy Brockman, was that they needed
09:29:19 18 a change in leadership for management of this
09:29:23 19 Parkinson's disease.

09:29:25 20 Q. Okay. I want to show you what's been marked as
09:29:28 21 Defendant's -- and admitted as Defense Exhibit 80.
09:29:36 22 It's a clinic note from March 13th of 2019. Is this
09:29:41 23 what you recalling with the visit of Mister and
09:29:45 24 Mrs. Brockman where there was a complaint about the
09:29:46 25 medication and the Sinemet?

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09:29:49 1 **A.** Yes.

09:29:49 2 **Q.** And -- were there changes made to that
09:29:54 3 medication as far as you became aware of?

09:29:57 4 **A.** Yes. Typically -- typically -- let's go back
09:30:03 5 to expertise here. There is not a specific pathway,
09:30:11 6 roadmap, therapeutic algorithm -- any of the terms
09:30:16 7 you would like to use -- for the treatment of
09:30:19 8 Parkinson's disease. They -- that treatment
09:30:23 9 regiment needs to be individualized, and the
09:30:26 10 individualization of that treatment regiment is very
09:30:28 11 much based upon the patient and the expertise of the
09:30:32 12 specialist that's doing that.

09:30:34 13 So I routinely do not deal with
09:30:37 14 those drugs in my patients if I have referred them
09:30:40 15 to a specialist in Parkinson's disease. So my plan
09:30:45 16 was for Dr. Eugene Lai -- L-A-I, M.D., Ph.D. -- who
09:30:53 17 again is a long-term colleague who -- formerly of
09:30:58 18 Baylor College of Medicine, and now at Methodist
09:31:01 19 Hospital, and the head of Alzheimer's Cognitive
09:31:05 20 Disfunction -- excuse me -- and Parkinson's Disease
09:31:11 21 at Methodist Hospital. I asked Eugene Lai to see
09:31:16 22 Mr. Brockman and to give me an opinion on how his
09:31:24 23 Parkinson's disease should be managed, and the
09:31:26 24 current stage of his Parkinson's disease under
09:31:28 25 current treatment.

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09:31:28 1 Q. Okay. We'll get to Dr. Lai in just a moment,
09:31:30 2 but for purposes of what you said, I just want to
09:31:32 3 make sure the record clear. You said Dr. Lai is
09:31:34 4 someone you referred Mr. Brockman to at some point
09:31:36 5 in time who has no connection to Baylor presently
09:31:39 6 whatsoever?

09:31:40 7 A. No, not at all.

09:31:42 8 Q. Before we get there, I wanted to show you
09:31:44 9 what's been marked as Defense Exhibit 82. May I
09:31:47 10 approach?

09:31:48 11 THE COURT: You may approach.

09:32:00 12 MR. LANGSTON: That's 82?

09:32:02 13 MR. VARNADO: Yeah.

09:32:03 14 Q. I'll show this on the screen in just a moment
09:32:06 15 but, Dr. Pool, does this appear to be an e-mail from
09:32:09 16 Mr. Brockman to you on May 5th of 2019?

09:32:13 17 A. That is correct.

09:32:13 18 Q. Is that your address there, jpool@bcm.edu?

09:32:19 19 A. That is correct.

09:32:20 20 MR. VARNADO: Move to admit Defense
09:32:22 21 Exhibit 82.

09:32:22 22 MR. LANGSTON: No objection.

09:32:23 23 THE COURT: Without objection, Defense
09:32:25 24 Exhibit 82 is admitted.

09:32:29 25 MR. VARNADO:

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09:32:30 1 Q. Wanted to show you, Dr. Pool, this e-mail from
09:32:32 2 Mr. Brockman where he says -- I'll read it from the
09:32:36 3 beginning, "Reporting in, I'm in pretty good shape.
09:32:39 4 Mental faculties have greatly improved. Strength
09:32:42 5 flexibility and balance have improved dramatically
09:32:50 6 through yoga, cardio and free weight training three
09:32:50 7 times a week at the Houstonian."

09:32:53 8 I just want to focus on that one
09:32:55 9 paragraph, Dr. Pool. What's Mr. Brockman
09:33:00 10 communicating to you here in May of 2019?

09:33:03 11 A. May I ask for a clarification? What was the
09:33:06 12 first date that Eugene Lai saw Mr. Brockman?

09:33:12 13 Q. I believe it's January of 2020, so it's a
09:33:14 14 little bit after this time period.

09:33:16 15 A. Okay. There was a -- there was a time period
09:33:21 16 in this sequence of events that Dorothy and Bob
09:33:29 17 Brockman unilaterally, without physician advice,
09:33:33 18 decided to change the Sinemet treatment -- at least
09:33:38 19 that drug I know. And the intent was to reduce it.

09:33:44 20 Q. For what purpose, as you understood it?

09:33:46 21 A. To avoid being overmedicated would be the best
09:33:50 22 way to describe it.

09:33:52 23 Q. So -- sorry. Go ahead, Dr. Pool.

09:33:54 24 A. And I would say that -- that first paragraph
09:34:00 25 probably relates to the -- the fact that they

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09:34:06 1 reduced the Sinemet and were adjusting medications
09:34:12 2 on their own before we got the Eugene Lai consult.

09:34:16 3 Q. Okay. So, you know, referencing this
09:34:19 4 communication, and then your interaction with
09:34:21 5 Mr. Brockman generally, did you get the sense he was
09:34:24 6 trying to convince you that he had severe memory
09:34:27 7 impairment and was, you know, on a massive downward
09:34:32 8 trajectory? Is that what you thought he was -- your
09:34:35 9 interaction with him, or is this not consistent with
09:34:38 10 that --

09:34:38 11 THE COURT: Okay. Objection? Go
09:34:42 12 ahead.

09:34:42 13 MR. LANGSTON: Objection -- well, both
09:34:44 14 leading, and this is outside this witness's
09:34:46 15 expertise and spectrum.

09:34:48 16 THE COURT: Objection leading
09:34:49 17 sustained.

09:34:50 18 MR. VARNADO:

09:34:50 19 Q. Dr. Pool, is this e-mail where Mr. Brockman is
09:34:54 20 conveying -- put it this way. Did you believe
09:34:58 21 Mr. Brockman was telling the truth here when he's
09:35:00 22 interacting with you and sending you to this e-mail?

09:35:04 23 A. As he knew it.

09:35:05 24 Q. What do you mean by that?

09:35:06 25 A. Well, his perception -- I mean, he's reporting

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09:35:09 1 -- he's reporting what he personally felt.

09:35:15 2 Q. Okay did you ever get the view that

09:35:20 3 Mr. Brockman was trying to convince you he was

09:35:22 4 suffering from any kind of malady or affliction that

09:35:25 5 he was not?

09:35:30 6 A. From October 2018 onward, there was always a

09:35:45 7 dual messaging. The dual messaging was, "I'm still

09:35:52 8 the boss. I'm still in charge."

09:35:58 9 But the second message was,

09:36:02 10 "Something's not right."

09:36:03 11 Q. And what were you observing in this time period

09:36:06 12 with respect to Mr. Brockman's cognitive abilities,

09:36:09 13 as we get from 2018 into 2019 and 2020 time period?

09:36:14 14 A. Yeah, basically going down -- going down.

09:36:18 15 Q. Thank you. Take that back. So, Dr. Pool, are

09:36:28 16 you aware that in January of 2019, Mr. Brockman sat

09:36:33 17 for two days of a deposition and was under oath and

09:36:40 18 -- and on camera for that deposition?

09:36:43 19 A. May I ask, is that the deposition that you

09:36:47 20 showed me during one of our meetings?

09:36:49 21 Q. Yes.

09:36:50 22 A. Yeah, then I am aware of that.

09:36:52 23 Q. Are you aware under the same circumstances of

09:36:57 24 certain speeches that Mr. Brockman gave to Reynolds

09:37:01 25 and Reynolds personnel?

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09:37:02 1 A. Again, may I ask, is that the video clip that
09:37:06 2 you showed me of -- at the annual meeting?

09:37:10 3 Q. Yes.

09:37:10 4 A. I don't know what the date was for that but,
09:37:13 5 yes, I am aware of that.

09:37:15 6 Q. You did not watch the entirety of the
09:37:17 7 deposition or the speech itself; is that fair?

09:37:21 8 A. I did not. I did not.

09:37:22 9 Q. You reviewed portions of both the deposition
09:37:25 10 and the speech?

09:37:25 11 A. Yes.

09:37:25 12 Q. Okay. And in your view, is there inconsistency
09:37:29 13 between Mr. Brockman's cognitive performance on the
09:37:34 14 tests that you administered, that Dr. York
09:37:36 15 administered, and his ability to sit for those
09:37:40 16 depositions and give those speeches?

09:37:42 17 MR. LANGSTON: Your Honor, I'd just
09:37:43 18 like to clarify when Defense Counsel showed these to
09:37:45 19 him?

09:37:46 20 THE COURT: Okay. Counsel? I mean,
09:37:48 21 when did you see these?

09:37:51 22 THE WITNESS: They -- I -- I met with
09:37:53 23 the Defense Counsel -- go backwards -- two weeks ago
09:37:59 24 Friday.

09:38:00 25 THE COURT: Okay.

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09:38:01 1 THE WITNESS: So last Friday would have
09:38:02 2 been two weeks, and I met in my office at the Baylor
09:38:08 3 College of Medicine early afternoon. I'm sorry,
09:38:11 4 can't do the date without looking at a calendar, but
09:38:13 5 it was two weeks prior to this last Friday.

09:38:17 6 THE COURT: Okay.

09:38:17 7 MR. LANGSTON: Well, then, Your Honor,
09:38:19 8 as this would have no possible impact on his
09:38:21 9 treatment of Mr. Brockman now I think we are firmly
09:38:23 10 in the area of expert testimony.

09:38:25 11 THE COURT: Yeah. I mean, talk to me
09:38:27 12 about that.

09:38:29 13 MR. VARNADO: Yeah, Your Honor. I
09:38:29 14 think -- I think Dr. Pool's experience with patients
09:38:32 15 who are able to perform in certain capacities,
09:38:36 16 despite suffering from dementia, is highly relevant.
09:38:39 17 I think the Government has made these videos the
09:38:42 18 centerpiece of their case.

09:38:43 19 THE COURT: Don't you have experts that
09:38:44 20 are going to deal with that other than this expert?
09:38:46 21 I mean, not expert, but this -- Dr. Pool is a fact
09:38:50 22 witness who testifies that -- who is testifying
09:38:53 23 about what he saw, how he reacted to what he saw,
09:38:56 24 what he did based on what he saw. But now you are
09:39:00 25 asking him to go back and comment on things that he

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09:39:04 1 never knew about during the course of his treatment
09:39:06 2 and say whether or not that is consistent or
09:39:10 3 inconsistent with what he did or what he saw.

09:39:14 4 Response?

09:39:15 5 MR. LANGSTON: Your Honor, I agree. I
09:39:17 6 think in this case -- look, if I recall correctly
09:39:20 7 there was a point where they did notify -- notice
09:39:23 8 Dr. Pool as an expert, and he may well be able to
09:39:26 9 give expert testimony. But having him go back in
09:39:28 10 time is not the purview. It did not impact his care
09:39:33 11 of Mr. Brockman, and so -- you know, that isn't why
09:39:37 12 he's here to testify.

09:39:38 13 THE COURT: Are you going to have
09:39:39 14 witnesses that are going to testify about his
09:39:42 15 observations versus the video?

09:39:49 16 MR. VARNADO: Yeah. And, Your Honor, I
09:39:50 17 think this is relevant for at the time of these
09:39:54 18 videos January of 2019 and November of '19, you
09:39:58 19 know, what is Dr. Pool's observations of
09:40:00 20 Mr. Brockman? And does he have -- you know, in his
09:40:04 21 experience, could Mr. Brockman still sit for a
09:40:07 22 deposition, and then the patients that he's treated,
09:40:11 23 and the vast array of experience dealing with people
09:40:15 24 with dementia. I mean, that's why this is being
09:40:18 25 offered.

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09:40:19 1 MR. LANGSTON: That's why I asked the
09:40:20 2 clarifying question, Your Honor. If he had viewed
09:40:22 3 these as part of his care back in 2019, I think
09:40:25 4 we're in a different situation. I don't really
09:40:27 5 doubt that whether his performance on these videos
09:40:30 6 is consistent with how he's performing exam rooms is
09:40:33 7 relevant, but it's my objection that this is
09:40:36 8 unnoticed expert testimony.

09:40:37 9 THE COURT: That's my concern. Are you
09:40:38 10 going to have an expert -- I assume that since it's
09:40:41 11 the issue you are going to have an expert that's
09:40:43 12 going to say that -- that's going to look at
09:40:47 13 Dr. Pool's notes, compare what he saw versus the
09:40:50 14 deposition and say whether it's consistent or
09:40:53 15 inconsistent. I assume you will have somebody other
09:40:55 16 than Dr. Pool to say that?

09:40:56 17 MR. VARNADO: We are going to have an
09:40:58 18 expert come testify about Mr. Brockman's performance
09:41:02 19 in the depositions, and what that does and does not
09:41:04 20 mean.

09:41:04 21 THE COURT: Okay. Then respectfully
09:41:05 22 I'm not going to allow this testimony from this
09:41:07 23 witness at this time.

09:41:08 24 MR. VARNADO: Okay.

09:41:11 25 Q. Dr. Pool, in your interaction with

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09:41:14 1 Mr. Brockman, do you have a view as to whether or
09:41:19 2 not he has preserved, remote memories?

09:41:23 3 **A.** I do. I do. Basically my interactions with
09:41:28 4 Mr. Brockman, you see a -- sort of a segmental
09:41:34 5 pattern that we see over and over again in people
09:41:37 6 who are demented, and that is remote memory remains
09:41:42 7 relatively intact until late, late, late.
09:41:46 8 Intermediate memory intact until late. And then,
09:41:53 9 short-term memory is really, significantly impaired.

09:41:56 10 So I could -- I could ask things
09:42:02 11 that relate to the many decades of his -- his
09:42:09 12 business life and get pretty detailed results -- or
09:42:17 13 information, but then, "Where were you yesterday?
09:42:20 14 What did you do this morning," et cetera.

09:42:26 15 And that disconnect of short-term
09:42:28 16 memory loss is always something that's really
09:42:31 17 concerning.

09:42:31 18 **Q.** In your treatment with Mr. Brockman, did you
09:42:34 19 observe, one way or another, whether he observed to
09:42:37 20 have preserved language function in your
09:42:39 21 interactions with him?

09:42:40 22 **A.** And again, it's remarkable. I mean, we all --
09:42:44 23 we all -- in the field of Primary Care Neurology
09:42:49 24 Dementia, if you lose fluency in your speech, you
09:42:59 25 become suspect very quickly. If you don't lose

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09:43:03 1 fluency -- if your fluency is maintained, then you
09:43:06 2 can continue to fly below the radar of peoples'
09:43:10 3 perceptions that you are, in fact, impaired.

09:43:13 4 And dare I say, we have plenty of
09:43:16 5 examples of that in American society. We all lived
09:43:19 6 through the President Ronald Reagan's era where he
09:43:25 7 had Alzheimer's, but we didn't know it.

09:43:26 8 Q. Did you observe that same phenomenon with
09:43:30 9 Mr. Brockman?

09:43:30 10 A. Certainly.

09:43:38 11 Q. Dr. Pool, at some point did you become aware
09:43:41 12 that Dr. York had conducted a -- a forensic
09:43:45 13 examination of Mr. Brockman, as opposed to just a
09:43:47 14 clinical examination, or do you know that one way or
09:43:50 15 the other?

09:43:51 16 A. I was made aware of that by Dr. York that she
09:43:56 17 was going to re-examine using different methodology
09:44:02 18 -- I mean, some sort of change in the way
09:44:07 19 neuropsychological testing is done. And I do not
09:44:09 20 have any expertise in that area. I don't know what
09:44:12 21 that change is.

09:44:14 22 Q. You mentioned Dr. Eugene Lai, and that you had
09:44:18 23 actually made a referral to this doctor in Houston
09:44:22 24 Methodist?

09:44:22 25 A. Right.

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09:44:23 1 Q. What was the reason for moving Mr. Brockman
09:44:26 2 over to Dr. Lai at a different hospital system?

09:44:29 3 A. Well, first of all it was a request. "Please
09:44:32 4 find me another Parkinson's specialist."

09:44:35 5 And the -- probably the
09:44:40 6 second-ranking Parkinson's specialist in the greater
09:44:42 7 Houston Metroplex would be Dr. Eugene Lai after
09:44:47 8 Dr. Jankovic.

09:44:48 9 Q. Do you recall -- I just gave you the date
09:44:51 10 before -- January 2020, is that consistent with your
09:44:54 11 memory of when Mr. Brockman started seeing Dr. Lai?

09:44:57 12 A. Yes.

09:44:57 13 Q. Okay. Do you, sitting here right now, have an
09:45:04 14 understanding of what Dr. Lai's diagnosis of what
09:45:07 15 Mr. Brockman was?

09:45:07 16 A. Parkinson's disease --

09:45:10 17 Q. What about -- sorry. Go ahead.

09:45:12 18 A. -- with cognitive impairment.

09:45:13 19 Q. All right. And did you become aware that
09:45:20 20 Mr. Brockman is seeing Dr. Lai on a number of
09:45:23 21 several occasions since that first visit?

09:45:25 22 A. Yes.

09:45:25 23 Q. Do you recall that the most recent one was in
09:45:28 24 October 7th of this year?

09:45:29 25 A. Yes.

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09:45:29 1 Q. Okay. I'm going to show you what's already in
09:45:32 2 evidence as Defense Exhibit 48. I'll let you take a
09:45:50 3 look at that, Dr. Pool. I'll just direct your
09:46:03 4 attention to Page 4 of 5 of the report in the
09:46:07 5 exhibit itself. It ends in the number at the very
09:46:09 6 bottom, 5779, and ask if you --

09:46:15 7 MR. LANGSTON: Is this 80?

09:46:24 8 MR. VARNADO:

09:46:24 9 Q. First of all, did you receive this report from
09:46:26 10 Dr. Lai's most recent visit with Mr. Brockman?

09:46:29 11 A. I extracted it. The push function of
09:46:35 12 electronic medical records between institutions is
09:46:38 13 far from perfect. Most of the time we have to go
09:46:42 14 extract them. You have to know that they're there
09:46:45 15 and go extract them, and that's how this was
09:46:48 16 obtained.

09:46:48 17 Q. Okay. And so you were able to obtain Dr. Lai's
09:46:52 18 assessment of Mr. Brockman on October 7th?

09:46:54 19 A. And this is what I obtained.

09:46:56 20 Q. Okay. What was the impression that Dr. Lai had
09:47:00 21 as of October 7th of this year?

09:47:02 22 A. Again, the clinical findings are consistent
09:47:05 23 with Parkinson's with associated dementia.

09:47:08 24 Q. Okay.

09:47:12 25 A. And then he says, 'His cognitive function has

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09:47:14 1 deteriorated since his last visit. He's under a lot
09:47:19 2 of stress, and is weaker due to recurrent urinary
09:47:23 3 tract infections. His wife is also stressed out."

09:47:28 4 Q. Okay. Want to shift gears a little bit,
09:47:40 5 Doctor, and go through some of Mr. Brockman's recent
09:47:42 6 hospitalizations. Okay. Did you become aware that
09:47:46 7 Mr. Brockman was hospitalized in March of this year
09:47:50 8 at Houston Methodist?

09:47:51 9 A. Yes.

09:47:51 10 Q. And what was that hospitalization for?

09:47:54 11 A. Urinary tract infection, complicated by sepsis.

09:47:58 12 Q. And what's the significance of that episode for
09:48:03 13 Mr. Brockman?

09:48:05 14 A. It was the first of three episodes. And
09:48:09 15 obviously for us, as the primary care team, that's
09:48:19 16 very concerning because it sets the stage for one of
09:48:24 17 the worst of the complications that we anticipate.
09:48:28 18 That is if you are -- if you have a bloodborne
09:48:35 19 infection -- meaning that your bladder or kidneys
09:48:38 20 are infected -- gets into the bloodstream -- also
09:48:41 21 known as urosepsis, then in all reasonable medical
09:48:47 22 probability you are going -- you are likely to see
09:48:49 23 what we call metabolic encephalopathy, which is an
09:48:55 24 array of things happening to you that result in, you
09:49:02 25 hope, reversible -- but sometimes not totally

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09:49:04 1 reversible -- damage to the central nervous system.

09:49:07 2 And in somebody who is demented,
09:49:10 3 whenever we're in the midst of one of those
09:49:12 4 episodes -- and this -- this has been articulated to
09:49:19 5 Dorothy Brockman more than once -- is that you can
09:49:22 6 anticipate that the level of cognitive function for
09:49:25 7 the individual whose -- who is demented who has
09:49:30 8 urosepsis, it will go down and be a new plateau.
09:49:34 9 And each episode carries the same risk of going
09:49:37 10 down, new plateau; going down, new plateau.

09:49:40 11 Q. Okay. What about -- do the records show in
09:49:43 12 March in that Mr. Brockman also suffered from
09:49:46 13 delirium --

09:49:46 14 A. Yes.

09:49:47 15 Q. -- during his urosepsis episode?

09:49:50 16 A. Yes.

09:49:50 17 Q. What's the significance of that?

09:49:52 18 A. It's a manifestation of the metabolic
09:49:56 19 encephalopathy, so that the derangement of the
09:50:02 20 cortical -- the two big hemispheres of the brain --
09:50:05 21 the derangement of their function is such that you
09:50:08 22 begin to have real, lifelike experiences that are a
09:50:16 23 malfunction of the brain. And of course if you are
09:50:18 24 demented and if you are encephalopathic, then you
09:50:23 25 have a significant probability of something like

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09:50:25 1 that happening.

09:50:26 2 Q. And is there any risk of any permanent damage
09:50:28 3 from an episode of delirium into those conditions?

09:50:32 4 A. We usually -- we usually tell patients and
09:50:37 5 families that for the most part we're going to
09:50:41 6 anticipate there's going to be some permanent
09:50:43 7 damage, because you are basically injuring an
09:50:49 8 injured organ. So the injury to an injured organ
09:50:51 9 nets you a persistence of injury.

09:50:54 10 Q. Did there come a time there was a second
09:50:57 11 hospitalization for urosepsis this summer?

09:50:59 12 A. Yes.

09:50:59 13 Q. When was that, if you recall?

09:51:01 14 A. That I would have to refer. But everything
09:51:03 15 came very -- in very rapid succession.

09:51:07 16 Q. Is it consistent with your memory if I
09:51:09 17 represented that this occurred between May 31st and
09:51:12 18 June 11th, Mr. Brockman's second hospitalization?

09:51:15 19 A. Yes.

09:51:15 20 Q. Okay. And again, what's your understanding of
09:51:17 21 what occurred during that period of time?

09:51:20 22 A. Virtually a mirror image of the previous
09:51:23 23 episode.

09:51:24 24 Q. And were there bouts of delirium also suffered
09:51:28 25 during that time period?

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09:51:29 1 A. That I cannot confirm with certainty. That
09:51:32 2 would be in the nurse's notes.

09:51:34 3 Q. But if those notes were in there, would you
09:51:37 4 have the same reaction --

09:51:38 5 A. Yes.

09:51:38 6 Q. -- as to the significance of delirium in that
09:51:41 7 time period?

09:51:41 8 A. Yes.

09:51:42 9 Q. Okay. Now, later in June did Mr. Brockman
09:51:48 10 undergo in any surgical procedures?

09:51:50 11 A. Yes.

09:51:51 12 Q. What can you tell us about that?

09:51:52 13 A. Yes, what -- what -- when we incurred this kind
09:51:57 14 of recurrent urinary tract infection -- remembering
09:52:01 15 that among men and women, women have more urinary
09:52:09 16 tract infections than men -- when we get recurrent
09:52:12 17 urinary tracts, especially to this magnitude, we
09:52:15 18 become concerned there's some problem in emptying
09:52:18 19 the bladder. Now, in about 2006 Mr. Brockman had
09:52:23 20 uroepithelial cancer of the bladder, which is how he
09:52:26 21 was introduced to Dr. Seth Lerner.

09:52:30 22 So we already have a scenario of
09:52:32 23 the bladder had an intrinsic abnormality that was
09:52:38 24 treated, and successfully -- successfully treated so
09:52:41 25 there's no evidence of uroepithelial cancer left.

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09:52:46 1 But at the same time you have older male who has had
09:52:49 2 epithelial cancer with changes in the bladder, and
09:52:52 3 you have an enlarged prostate that can be a source
09:52:56 4 of obstruction of urine flow.

09:52:59 5 And any time a male has a prostate
09:53:05 6 obstructing urine flow, it means that the bladder is
09:53:08 7 probably not completely emptying. And so, there's a
09:53:13 8 valuable nutrient base left in the bladder that
09:53:19 9 bacteria can use as a ready food source. The reason
09:53:23 10 we have so many urinary tract infections in humans
09:53:26 11 is that urine is a marvelous nutrient base for
09:53:30 12 bacteria.

09:53:31 13 If you see that urine, then you are
09:53:33 14 likely to get a urinary tract infection.

09:53:35 15 Q. So that condition is what was causing or
09:53:37 16 leading to the recurrence of the UTI's for
09:53:40 17 Mr. Brockman?

09:53:41 18 A. One of the major contributors, and that is
09:53:43 19 manageable -- treatable. So I called
09:53:48 20 Dr. Christopher Smith, who is a urologist at Baylor,
09:53:51 21 and asked for his assistance. Said, "What is the
09:53:56 22 status of the bladder? Do we have retained urine?
09:53:59 23 Do we have bladder dysfunction so it's not emptying?
09:54:02 24 Do we have significant obstruction?"

09:54:05 25 He returned with the opinion we

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09:54:07 1 needed to do a UroLift® procedure to allow the
09:54:13 2 bladder to completely empty and reduce the
09:54:16 3 likelihood of infection.

09:54:18 4 Q. And is that a medical procedure done under
09:54:21 5 general anesthesia?

09:54:21 6 A. Yes.

09:54:22 7 Q. Okay. And did Mr. Brockman consent to general
09:54:25 8 anesthesia for this procedure?

09:54:27 9 A. Mr. Brockman has never consented to any
09:54:29 10 procedure since 2018, because he's not able to
09:54:34 11 consent to procedures.

09:54:36 12 Q. Who did consent in this instant?

09:54:38 13 A. Dorothy Brockman.

09:54:40 14 Q. Do you understand if she has durable medical
09:54:44 15 power of attorney?

09:54:44 16 A. Yes.

09:54:44 17 Q. What is the significance, if any, of someone in
09:54:49 18 Mr. Brockman's age and health condition going under
09:54:52 19 general anesthesia for a surgical procedure?

09:54:54 20 A. The onus for that is on me to determine if
09:54:59 21 there's anything of immediate risk to him that makes
09:55:03 22 the benefit-risk ratio tilt so that we shouldn't be
09:55:09 23 doing it. I told Chris Smith that as of my June
09:55:14 24 examination I thought that -- that I felt the risk
09:55:16 25 of recurrent urinary tract infection, urosepsis, and

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09:55:21 1 encephalopathy way outweighed any risk because of
09:55:25 2 age, atrial fib, and the other things. So I gave
09:55:28 3 him instructions to go ahead with the UroLift®.

09:55:32 4 Q. Are there any potential impacts on a patient's
09:55:34 5 cognition and cognitive function after undergoing
09:55:38 6 general anesthesia?

09:55:39 7 A. We use the same language --

09:55:42 8 MR. LANGSTON: Objection.

09:55:42 9 THE COURT: What's the objection?

09:55:43 10 MR. LANGSTON: Again, this is expert
09:55:45 11 testimony. I don't know that he's saying that he
09:55:47 12 used it in evaluating his treatment. I think this
09:55:50 13 was in 2021. And so, this witness -- I mean,
09:55:53 14 they're getting plenty of witnesses who can testify
09:55:57 15 about the effects of general anesthesia on a
09:56:00 16 patient. I just don't know if this is one of them.

09:56:00 17 THE COURT: But does this witness have
09:56:03 18 general knowledge of the procedure and the
09:56:04 19 anesthesia that was administered?

09:56:07 20 MR. LANGSTON: Again, I think he can
09:56:08 21 testify to the anesthesia that was administered.
09:56:11 22 Now -- and I believe he testified his training is in
09:56:13 23 cardiology, and now he's testifying as to the
09:56:15 24 effects of general anesthesia on cognition going
09:56:19 25 forward. I don't think this witness is qualified to

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09:56:22 1 do that.

09:56:22 2 THE COURT: Okay. So I guess the
09:56:28 3 question I have to ask Dr. Pool, was the use of the
09:56:36 4 general anesthesia, in any way, used by you in your
09:56:39 5 treatment, or your diagnoses, or perception of
09:56:43 6 Mr. Brockman's condition?

09:56:46 7 THE WITNESS: It's -- the fact that he
09:56:48 8 would be required to have general anesthesia for the
09:56:51 9 surgery is used in my judgment because I had to
09:56:56 10 inform the spouse, who had a legal authority to
09:57:00 11 consent, that cognitive function may not return to
09:57:03 12 his previous, pre-anesthetic baseline. She was not
09:57:08 13 only saying, "We're willing to take the risk of
09:57:10 14 death and any other complication," but -- "And I
09:57:15 15 will acknowledge that you told me if we use general
09:57:18 16 anesthesia, my husband's cognitive function may
09:57:21 17 decline and not return to baseline."

09:57:24 18 THE COURT: Okay. Objection's
09:57:25 19 overruled. You may continue.

09:57:26 20 MR. VARNADO:

09:57:26 21 Q. But you felt that the risk of the recurring
09:57:29 22 UTI's was significant enough to go forward?

09:57:31 23 A. Paramount.

09:57:32 24 Q. Okay. And, in fact, has there been another UTI
09:57:36 25 episode in September of this year?

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09:57:38 1 **A.** Yes.

09:57:39 2 **Q.** Was Mr. Brockman hospitalized again for a short
09:57:41 3 period of time?

09:57:44 4 **A.** Yes.

09:57:44 5 **Q.** Okay. What's your assessment as to whether or
09:57:48 6 not Mr. Brockman is susceptible to additional UTI's,
09:57:52 7 potentially urosepsis?

09:57:55 8 **A.** After the September episode, Dr. Chris Smith
09:57:57 9 and I reconvened on the phone and said, "Okay. What
09:58:01 10 is our current status?"

09:58:03 11 He was brought back to the clinic
09:58:05 12 to see Dr. Smith. Dr. Smith ascertained that the
09:58:09 13 UroLift® procedure was successful. There was very,
09:58:12 14 very, very trivial retained urine. The bladder was
09:58:15 15 adequately emptying, but there are multiple,
09:58:22 16 multiple factors that go into recurrent urinary
09:58:25 17 tract infections in Mr. Brockman's case. And so we
09:58:31 18 jointly decided -- we jointly decided to put him on
09:58:38 19 a 30-day trial of antibiotic suppression to try to
09:58:43 20 mitigate any small quantities of urinary tract
09:58:47 21 infection that could occur that would, in fact, get
09:58:51 22 out of control and produce bloodborne infection,
09:58:56 23 urosepsis, metabolic encephalopathy, and more loss
09:58:59 24 of mental function.

09:59:00 25 **Q.** So you were all working hard to try to prevent

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09:59:02 1 that from happening again?

09:59:03 2 **A.** We are.

09:59:04 3 **Q.** I want to talk a little bit about the
09:59:05 4 neuroimaging in this case, and some of the scans
09:59:08 5 that have been done on Mr. Brockman more recently.
09:59:12 6 Are you aware he's undergone in the last several
09:59:15 7 months FDG-PET scans, beta-amyloid PET scan, brain
09:59:18 8 MRI -- those types of imaging and testing
09:59:21 9 procedures?

09:59:22 10 **A.** I am aware they were done.

09:59:23 11 **Q.** Is that anything that you have -- does that
09:59:26 12 impact your assessment of Mr. Brockman's current
09:59:30 13 condition as we sit here today?

09:59:32 14 **A.** To me, it is supportive evidence that goes with
09:59:37 15 clinical observation and objective testing, and
09:59:41 16 comes back into the category of, "Is there
09:59:45 17 neurodegenerative damage to the brain?"

09:59:47 18 "Yes."

09:59:48 19 "Is it subjective only, or is it
09:59:53 20 objective?"

09:59:54 21 And the answer is it's objective.

09:59:56 22 **Q.** We talked already about the letter that you had
10:00:01 23 sent to Ms. Keneally in January of 2020 -- I'm
10:00:05 24 shifting topics a little bit. Did you also submit a
10:00:08 25 declaration in November of 2020 in support of the

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10:00:13 1 Defendant's motion to transfer this case from
10:00:15 2 San Francisco to Houston?

10:00:18 3 **A.** Yes.

10:00:18 4 **Q.** Okay. And, in general, what do you recall
10:00:22 5 being the substance of that declaration in terms of
10:00:25 6 what you provided to Judge Alsup in San Francisco?

10:00:28 7 **A.** Well, obviously everybody in this courtroom
10:00:32 8 knows we're in the middle of a pandemic --
10:00:38 9 Coronavirus pandemic, COVID-19. For the perspective
10:00:44 10 of my patient, I did not feel that it would be
10:00:49 11 appropriate to transport Mr. Brockman to another
10:00:56 12 city for a trial, which would be physically
10:01:05 13 difficult for him, and also increase his risk for
10:01:11 14 contracting COVID being out of a much more tightly
10:01:15 15 constrained environment.

10:01:16 16 He's in a pretty tightly
10:01:18 17 constrained environment, except for this hearing.

10:01:20 18 **Q.** And then, in terms of the declaration, did you
10:01:24 19 also provide an explanation of Mr. Brockman's health
10:01:26 20 conditions?

10:01:26 21 **A.** Yes.

10:01:26 22 **Q.** And then note that the Baylor treating
10:01:29 23 physicians would be here in Houston?

10:01:31 24 **A.** Yes.

10:01:32 25 **Q.** Okay. I want to talk to you just about -- a

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10:01:37 1 little bit about Mr. Brockman's condition, both
10:01:39 2 physically and -- and cognitively. Are
10:01:43 3 Mr. Brockman's physical conditions permanent?

10:01:45 4 **A.** Yes.

10:01:46 5 **Q.** Are Mr. Brockman's cognitive conditions
10:01:49 6 permanent?

10:01:49 7 **A.** Yes.

10:01:49 8 **Q.** Are Mr. Brockman's cognitive conditions
10:01:54 9 progressive?

10:01:55 10 **A.** Yes.

10:01:56 11 MR. LANGSTON: Objection. Again, I
10:01:57 12 think this is prospective testimony. I think this
10:02:00 13 is expert testimony.

10:02:06 14 THE COURT: Dr. Pool, are you still
10:02:07 15 Mr. Brockman's primary care physician?

10:02:09 16 THE WITNESS: Yes.

10:02:10 17 THE COURT: And you are still providing
10:02:11 18 care to him?

10:02:12 19 THE WITNESS: Yes.

10:02:12 20 THE COURT: Okay. Objection's
10:02:14 21 overruled.

10:02:15 22 MR. VARNADO:

10:02:15 23 **Q.** Is it possible that removing Mr. Brockman from
10:02:17 24 familiar settings and routines could exacerbate and
10:02:21 25 accelerate his dementia?

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10:02:22 1 **A.** Yes.

10:02:23 2 **Q.** Is it possible that removing him from familiar
10:02:26 3 settings and routines could trigger an episode of
10:02:29 4 delirium?

10:02:29 5 **A.** Yes.

10:02:30 6 **Q.** I want to talk a little bit about malingering,
10:02:35 7 Dr. Pool. Actually, to Judge Hanks's question in
10:02:42 8 terms of treating Mr. Brockman, what's your most
10:02:45 9 recent interaction with Mr. Brockman or any of his
10:02:47 10 family members concerning his health condition?

10:02:49 11 **A.** Well, the part -- let me preface what I'm going
10:02:53 12 to say by saying that my direct interactions with
10:02:56 13 Mr. Brockman, in terms of exchange of information,
10:03:01 14 knowledge -- I mean, instructions, et cetera, is nil
10:03:09 15 because those are not functions he possesses. So my
10:03:13 16 interactions are primarily with Dorothy Brockman,
10:03:18 17 his wife; and Frank Gutierrez, who is his primary
10:03:23 18 caregiver.

10:03:24 19 I relied very, very heavily on them
10:03:26 20 to comprehend what it is that's in our treatment
10:03:31 21 strategy, and to execute that plan without fail.
10:03:36 22 Both of those are functions that Mr. Brockman does
10:03:39 23 not have. So on Saturday I reported back to --

10:03:49 24 **Q.** This is just two days ago, Dr. Pool?

10:03:51 25 **A.** Yes. Saturday afternoon, as a matter of fact.

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10:03:54 1 I had a telephone conference call at the Brockman
10:03:57 2 home with Dorothy, his wife, and with Frank
10:04:03 3 Gutierrez so we could go over the results of
10:04:06 4 laboratory that we had just finished. And the
10:04:09 5 primary target of the -- of the laboratory was to
10:04:12 6 answer the outcome of a strategy that Dr. Smith and
10:04:17 7 I had started.

10:04:18 8 So Dr. Christopher Smith, the
10:04:21 9 urologist who is a specialist in bladder function --
10:04:27 10 we had decided we were going to try to prevent
10:04:29 11 another episode of urosepsis. And so we -- he was
10:04:35 12 the one that requested that we choose cefalexin --
10:04:42 13 you would know it by the brand name Keflex --
10:04:46 14 250 milligrams twice a day, every day, to try to
10:04:50 15 suppress any growth of bacteria that entered the
10:04:52 16 bladder to avoid a very high load of bacteria and
10:04:57 17 the emergence of serious infection and urosepsis and
10:05:01 18 going into hospitalization number four.

10:05:05 19 Q. Okay.

10:05:05 20 A. And what we had done was the following in the
10:05:10 21 preceding seven to ten days. We had actually
10:05:15 22 obtained a straight cath urine specimen. Now,
10:05:19 23 that's obtained by using a sterile catheter,
10:05:22 24 inserting it through the tip of the penis, up
10:05:24 25 through the urethra into the bladder and getting a

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10:05:27 1 sterile collection of urine. That was done at his
10:05:30 2 home by one of my staff.

10:05:32 3 And then that was submitted to the
10:05:34 4 laboratory to determine if there were -- if there
10:05:37 5 was puss, bacteria, other signs of infection in the
10:05:43 6 bladder, and submitted for a culture to see if we
10:05:48 7 could culture bacteria. But the issue with
10:05:52 8 culturing the bacteria that becomes important is
10:05:55 9 he's on an antibiotic -- the antibiotic in the urine
10:06:01 10 is not suppressing the culture and then there's
10:06:04 11 culture there, okay.

10:06:06 12 So we used another technology on
10:06:09 13 this same specimen called next generation
10:06:10 14 sequencing. And so we used DNA fingerprinting. We
10:06:16 15 did DNA analysis of all microbes in the urine. And
10:06:19 16 the results were congruent across the entire
10:06:22 17 specimen collection.

10:06:24 18 Yes, there was low-grade infection.
10:06:26 19 Yes, the culture did grow in the presence of the
10:06:32 20 antibiotic, and the culture grew *Pseudomonas*
10:06:32 21 *aeruginosa* --

10:06:32 22 THE COURT: We'll have to get that one
10:06:32 23 spelled, Dr. Pool.

10:06:32 24 THE WITNESS: Okay.

10:06:50 25 P-S-E-U-D-O-M-O-N-A-S, A-E-R-U-G-I-N-O-S-A,

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10:06:52 1 pseudomonas aeruginosa. So the DNA sequencing
10:06:57 2 showed ten to the seventh DNA -- well, particles per
10:07:01 3 ML of urine that were all Pseudomonas. There was
10:07:08 4 nothing else in the urine except Pseudomonas.

10:07:12 5 And then, the other thing we could
10:07:13 6 do was analyze the Pseudomonas, and see if there was
10:07:18 7 a gene in the Pseudomonas that had the property of
10:07:24 8 multidrug resistance. We know about those genes and
10:07:28 9 analyzed them. There was none. So we made the
10:07:30 10 choice to eliminate the Keflex and change to another
10:07:38 11 antibiotic called fosfomycin. So now we're going to
10:07:43 12 treat day, to day, to day with fosfomycin.

10:07:46 13 Q. And is all of that, that you just described,
10:07:48 14 the lengths that you and Dr. Smith are going through
10:07:50 15 to try to prevent Mr. Brockman from having another
10:07:53 16 bout of urosepsis?

10:07:54 17 A. I mean, we're doing everything we can.

10:07:56 18 Q. And if you were to have another bout of
10:07:58 19 urosepsis, would you expect that to have a further
10:08:01 20 declining impact on his cognitive ability?

10:08:03 21 A. Well, the first thing -- I mean, there's rank
10:08:05 22 order. You can't -- there's no guarantee you are
10:08:08 23 going to recover from urosepsis, so there's
10:08:12 24 mortality. Then the morbidity -- which is the term
10:08:15 25 for non-mortality events -- includes metabolic

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10:08:20 1 encephalopathy -- which I described before -- and
10:08:23 2 change in mental function which persists.

10:08:25 3 Q. Okay. All right.

10:08:30 4 MR. VARNADO: Good on time, Judge?

10:08:32 5 THE COURT: Are you going to change
10:08:33 6 point? Take a quick break?

10:08:35 7 MR. VARNADO: Yes.

10:08:35 8 THE COURT: If we can break at this
10:08:36 9 time for ten minutes?

10:08:38 10 MR. VARNADO: Okay.

10:08:39 11 THE COURT: Because we're running --
10:08:40 12 it's already Monday, so let's take a ten-minute
10:08:42 13 break and then push on through lunch.

10:08:44 14 MR. VARNADO: Okay. Very good.

10:27:23 15 (Whereupon, a recess was held.)

10:30:09 16 THE COURT: You may continue,
10:30:10 17 Mr. Varnado.

10:30:11 18 MR. VARNADO: Thank you, Your Honor.

10:30:17 19 Q. Dr. Pool, I'm going to ask you a question about
10:30:19 20 Mr. Brockman's treating physician. Where do you
10:30:22 21 assess Mr. Brockman in terms of his cognitive
10:30:24 22 function? What level of dementia does he have?

10:30:29 23 A. In terms of day-to-day functionality, I would
10:30:40 24 describe him as moderately demented.

10:30:42 25 Q. Dr. Pool, you are not a forensic expert;

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10:30:45 1 correct?

10:30:46 2 **A.** Correct.

10:30:50 3 **Q.** Do you encounter and have to take into account
10:30:53 4 malingering in your practice as a medical doctor?

10:30:59 5 **A.** May I ask for what -- what is the definition of
10:31:04 6 malingering?

10:31:05 7 **Q.** Well, let me set it up this way, Dr. Pool. Are
10:31:08 8 you aware the Government has taken the position in
10:31:10 9 this case that Mr. Brockman is -- is faking or
10:31:14 10 exaggerating his level of cognitive impairment; is
10:31:17 11 that something you are aware of?

10:31:18 12 **A.** I am.

10:31:20 13 **Q.** So in terms of malingering, that would be my
10:31:24 14 layman's explanation of how I'm asking the question
10:31:28 15 and positing it to you. I want to first ask if
10:31:31 16 considering and taking into account potential
10:31:34 17 exaggeration or manufacture of symptoms, malingering
10:31:38 18 is something you encounter in your practice and have
10:31:40 19 to take into account?

10:31:43 20 **A.** The -- whenever you are dealing with human
10:31:50 21 beings you have to consider that as a possibility.

10:31:51 22 **Q.** In your treatment of Mr. Brockman, at some
10:31:53 23 point did you have come to understand that he was
10:31:55 24 under investigation -- you know, as part of this
10:31:59 25 criminal case?

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10:32:01 1 **A.** Just very recently, which would have been
10:32:06 2 either contact from the Department of Justice in
10:32:13 3 Denver, or Kathy Keneally from Jones Day in New
10:32:17 4 York.

10:32:17 5 **Q.** Okay. We referenced previously the letter from
10:32:20 6 January of 2020 that you submitted to Ms. Keneally,
10:32:25 7 who later provided that to the United States
10:32:27 8 Government. So as of that time, you were aware
10:32:29 9 there was some sort of investigation ongoing; is
10:32:33 10 that fair?

10:32:33 11 **A.** Correct.

10:32:33 12 **Q.** Okay. And in treating Mr. Brockman since that
10:32:36 13 time, have you factored that into your assessment in
10:32:39 14 considering where he is on the cognitive continuum?

10:32:44 15 **A.** Not at all.

10:32:45 16 **Q.** And is it your view that regardless of whether
10:32:53 17 Mr. Brockman is or is not under investigation you
10:32:55 18 would reach the same conclusion as to what his level
10:32:57 19 of cognitive impairment is?

10:32:58 20 **A.** That is correct.

10:33:01 21 **Q.** I want to ask you a factual question here. I
10:33:07 22 mentioned before the Government has argued that
10:33:09 23 Mr. Brockman has really led a double life and fooled
10:33:13 24 doctors by acting one way in front of them, but
10:33:18 25 acting a different way in a deposition and

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10:33:20 1 speeches --

10:33:21 2 MR. LANGSTON: Objection as to the -- I
10:33:23 3 don't know if that's a question. He's just telling
10:33:25 4 the doctor what the Government's theory in this case
10:33:27 5 is.

10:33:28 6 THE COURT: Okay. Well, I think he's
10:33:30 7 trying to set up the question. I'm going to allow
10:33:32 8 the question to be set up, so the objection's
10:33:35 9 overruled.

10:33:36 10 MR. VARNADO: Thank you, Your Honor.
10:33:37 11 Q. So again, just so we have this set up. The
10:33:39 12 Government has taken the position Mr. Brockman has
10:33:41 13 led a double life and fooled doctors for years
10:33:45 14 acting one way, but then acts another way in
10:33:48 15 depositions and speeches. So I want you to think
10:33:51 16 back to the clips that you saw of Mr. Brockman's
10:33:54 17 deposition and of his speeches, and does that look
10:33:58 18 like --

10:33:58 19 THE COURT: Objection's sustained.
10:33:59 20 Objection's sustained. It's the same question that
10:34:03 21 -- that I sustained the objection to earlier.

10:34:06 22 MR. VARNADO: Well, Judge, I would just
10:34:08 23 argue this is -- asking a factual question about his
10:34:11 24 observation of Mr. Brockman in 2019, and whether
10:34:15 25 it's consistent, you know, with the way he was

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10:34:17 1 presenting in the video.

10:34:18 2 THE COURT: Right, but that calls for
10:34:20 3 expert opinion -- it's the same question I sustained
10:34:24 4 the objection to earlier. He can say what he saw in
10:34:26 5 2019, what his impressions were in 2019, but he
10:34:31 6 didn't see those videos as part of his treatment or
10:34:35 7 diagnosis of Mr. Brockman at that time.

10:34:36 8 MR. VARNADO: Okay. Thank you, Judge.

10:34:38 9 Q. Dr. Pool, does it take skill to malingering an
10:34:43 10 illness, an infirmity?

10:34:46 11 A. It takes cognitive ability.

10:34:50 12 Q. And in your view, is that something
10:34:52 13 Mr. Brockman could accomplish, given his current
10:34:56 14 cognitive condition?

10:34:57 15 MR. LANGSTON: Objection, Your Honor.
10:34:58 16 I think that is an expert opinion. This witness is
10:35:02 17 not a neurologist. He's not a psychologist. He's
10:35:04 18 not a forensic expert, and so to ask him -- you
10:35:08 19 know, I think that's what we're trying to decide
10:35:11 20 here whether he can malingering based on his current
10:35:13 21 cognitive condition.

10:35:14 22 THE COURT: Objection's sustained. The
10:35:16 23 only answer -- the only question that this witness
10:35:18 24 can answer is does he think -- does he think that
10:35:26 25 Mr. Brockman is malingering, yes or no. I

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10:35:28 1 understand that's partly expert opinion, but based
10:35:31 2 on -- as the treating physician he can say that.

10:35:35 3 MR. VARNADO:

10:35:35 4 Q. As Mr. Brockman's treating physician, do you
10:35:37 5 believe him to be malingering his infirmity?

10:35:40 6 A. No.

10:35:41 7 MR. VARNADO: No further questions.
10:35:42 8 Pass the witness.

10:35:45 9 THE COURT: Cross-examination?

10:35:46 10 MR. LANGSTON: Thank you.

10:35:46 11 CROSS-EXAMINATION

10:35:46 12 BY MR. LANGSTON:

10:36:13 13 Q. Good morning, Dr. Pool.

10:36:13 14 A. Good morning.

10:36:14 15 Q. I think you said you started seeing him --
10:36:16 16 seeing the Defendant in October 15th of 2018?

10:36:20 17 A. Correct.

10:36:22 18 Q. And you didn't know him before you became his
10:36:25 19 doctor?

10:36:26 20 A. Correct.

10:36:26 21 Q. You are not friends with him outside of your
10:36:29 22 medical practice?

10:36:31 23 A. I am not.

10:36:31 24 Q. And so, it's fair to say your knowledge of him
10:36:34 25 starts on October 15, 2018?

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10:36:37 1 **A.** Correct.

10:36:38 2 **Q.** And you don't socialize with him -- even after
10:36:42 3 you became his doctor, you don't socialize with him
10:36:44 4 now?

10:36:45 5 **A.** No.

10:36:45 6 **Q.** Okay. So it's fair to say you've never seen
10:36:49 7 him, until today, outside of an exam room?

10:36:54 8 **A.** Correct.

10:36:55 9 **Q.** And so, other than information you may have
10:36:56 10 learned from Defense Counsel, your knowledge of him
10:36:58 11 is based on what you have learned as a treating
10:37:01 12 physician?

10:37:02 13 **A.** Correct.

10:37:02 14 **Q.** Based on what you learned inside the exam room?

10:37:05 15 **A.** Correct.

10:37:06 16 **Q.** Is that fair? Okay. I want to make sure I
10:37:12 17 understand how you came to be his doctor. I think
10:37:15 18 you testified that you were referred by Dr. Lerner?

10:37:18 19 **A.** Correct.

10:37:19 20 **Q.** Okay. And prior to you becoming -- I
10:37:24 21 think it's quarterback -- we're in Texas, so the
10:37:26 22 quarterback of his care -- he didn't have a
10:37:30 23 quarterback?

10:37:30 24 **A.** To the best of my knowledge since William
10:37:35 25 Obenour, he didn't have a general internist to take

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10:37:37 1 care of him.

10:37:37 2 Q. Are you familiar with Dr. Lisse?

10:37:40 3 A. Scott Lisse?

10:37:42 4 Q. And that was his primary care physician as of
10:37:46 5 August 21, 2018?

10:37:48 6 A. I did not know that.

10:37:49 7 Q. Okay. So you were not informed he had a
10:37:52 8 primary care physician as of August 2018?

10:37:58 9 A. Correct.

10:37:58 10 Q. And you were not aware of why he might have
10:38:02 11 been switching primary care physicians?

10:38:04 12 A. Other than Dr. Seth Lerner referring him.

10:38:09 13 Q. So I think you said that Dr. Lerner had noticed
10:38:18 14 something was amiss or something like that?

10:38:19 15 A. Correct.

10:38:20 16 Q. Okay. That was based on what Mr. Brockman and
10:38:24 17 his wife told Dr. Lerner; is that fair?

10:38:27 18 A. I doubt that. I would imagine it was probably
10:38:31 19 from what Dr. Lerner had observed as changes in the
10:38:34 20 patient.

10:38:35 21 Q. Okay. But I think you -- you mentioned and
10:38:38 22 that you need to refer to your notes, Dr. Lerner was
10:38:42 23 told that Mr. Brockman had been feeling bad since
10:38:45 24 February; do you remember that?

10:38:48 25 A. Correct.

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10:38:49 1 Q. Okay. And obviously Dr. Lerner is not actually
10:38:53 2 hanging out with Mr. Brockman since February; is
10:38:55 3 that fair?

10:38:55 4 A. Correct.

10:38:56 5 Q. So that's information that came from the
10:38:58 6 patient; fair to say?

10:38:59 7 A. Correct.

10:39:00 8 Q. Okay. And other than Dr. Lerner, are you aware
10:39:07 9 of any doctors that the Defendant saw prior to
10:39:09 10 seeing you about his cognitive condition?

10:39:12 11 A. To the best of my knowledge, no one had
10:39:15 12 addressed the cognitive change.

10:39:16 13 Q. Okay. And had the Defendant -- to the best of
10:39:20 14 your knowledge, were you aware the Defendant had
10:39:23 15 complained of a cognitive change prior to
10:39:25 16 Dr. Lerner?

10:39:25 17 A. No.

10:39:26 18 Q. Okay. If I understand your -- I think you used
10:39:32 19 the expression quarterback, but sort of like you are
10:39:35 20 the general contractor of his care; is that fair?

10:39:39 21 A. The one thing that distinguishes us a little
10:39:42 22 bit is that we tend to do more than the general,
10:39:45 23 internal medicine physician. In any one medical or
10:39:54 24 surgical speciality, we'll do more diagnostics, more
10:39:59 25 assessments before getting to the point of referral.

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10:40:01 1 Q. Okay.

10:40:02 2 A. To help out our colleagues.

10:40:04 3 Q. Okay. So you -- you are not just bringing a
10:40:06 4 plumber -- to use my analogy, you are seeing if the
10:40:09 5 plumbing is wrong and then going out to a plumber;
10:40:12 6 is that fair?

10:40:12 7 A. Correct.

10:40:13 8 Q. You said this is kind of a comprehensive
10:40:15 9 medical clinic?

10:40:16 10 A. Correct.

10:40:17 11 Q. Is this something that just -- like, could I
10:40:21 12 sign up for this clinic?

10:40:22 13 A. You could try.

10:40:23 14 Q. So what are the criteria to get in?

10:40:24 15 A. Space.

10:40:26 16 Q. Okay. I think you mentioned that you were not
10:40:32 17 -- you didn't know that Mr. Brockman was on the
10:40:34 18 board of trustees when he came to you?

10:40:36 19 A. Did not.

10:40:37 20 Q. Okay. You didn't know that Mr. Brockman had
10:40:40 21 donated money, or that a trust had donated money to
10:40:44 22 Baylor?

10:40:44 23 A. Correct.

10:40:45 24 Q. Okay. At some point, though, during your care
10:40:49 25 you did know that he was a member of the board of

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10:40:53 1 trustees; is that fair?

10:40:55 2 **A.** Yes.

10:40:55 3 **Q.** Okay. And, in fact, when you referred him to
10:40:58 4 other doctors that were on the team, you told them
10:41:01 5 that he was on the board of trustees?

10:41:04 6 **A.** That I cannot confirm.

10:41:07 7 **Q.** Okay. If you looked at your medical records,
10:41:10 8 would that help refresh your recollection that you
10:41:13 9 told other doctors?

10:41:14 10 **A.** Sure.

10:41:14 11 **Q.** Okay.

10:41:16 12 MR. LANGSTON: I'm going to show the
10:41:17 13 witness what I will mark as 154 for identification.
10:41:30 14 It's Page 298 and 923 of the Baylor medical records.

10:41:57 15 THE WITNESS: Thank you. Okay.

10:42:02 16 MR. LANGSTON:

10:42:03 17 **Q.** Does that refresh your recollection that --

10:42:04 18 **A.** It does. And so, this would have been Fall of
10:42:08 19 2019, a year later.

10:42:11 20 **Q.** Okay. And also on -- if you look at the first
10:42:14 21 one -- sorry, the second one, 923 -- because they go
10:42:18 22 backwards -- in September of 2018, did you indicate
10:42:22 23 that he was a member of the board of trustees?

10:42:27 24 **A.** Correct. Correct, September 21st of '18.

10:42:33 25 **Q.** Why did you include that information?

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10:42:36 1 **A.** It's usually intended so that the processes are
10:42:43 2 really facilitated.
10:42:45 3 **Q.** So he doesn't have to wait in line for an
10:42:48 4 appointment the way someone else might; is that
10:42:50 5 correct?
10:42:50 6 **A.** Correct. Correct.
10:42:50 7 **Q.** Okay. And so -- and I'm not saying it affected
10:42:53 8 the medical care, but it was to make sure
10:42:55 9 Mr. Brockman got special treatment?
10:42:58 10 **A.** At least facilitated treatment, yeah.
10:43:04 11 **Q.** Okay. So faster treatment?
10:43:05 12 **A.** Correct.
10:43:06 13 **Q.** So he would be treated differently than someone
10:43:09 14 not on the board of trustees; is that fair?
10:43:11 15 **A.** I'm not sure that that's true, it is just to
10:43:15 16 try to cut down on snafus.
10:43:18 17 **Q.** But you included that information to make sure
10:43:20 18 that the other doctors understood that he was on the
10:43:23 19 board of trustees?
10:43:23 20 **A.** Correct.
10:43:26 21 **Q.** Okay. And you, yourself, are not a
10:43:29 22 neurologist; is that fair?
10:43:30 23 **A.** Correct.
10:43:31 24 **Q.** You are not a psychiatrist?
10:43:32 25 **A.** Correct.

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10:43:33 1 Q. You are not a neuroradiologist?

10:43:35 2 A. Correct.

10:43:36 3 Q. And that's why when you were concerned that

10:43:39 4 maybe he had a cognitive issue you referred him out

10:43:42 5 for further testing?

10:43:43 6 A. Correct.

10:43:43 7 Q. I think you said Dr. Jankovic, who was the --

10:43:48 8 he had been your number one Parkinson's expert;

10:43:51 9 right?

10:43:51 10 A. Correct.

10:43:52 11 Q. And Dr. Lai was the number two Parkinson's

10:43:55 12 expert?

10:43:55 13 A. Correct.

10:43:55 14 Q. So it's fair to say that they -- they had more

10:43:58 15 expertise in this area than you would?

10:44:01 16 A. Correct.

10:44:01 17 Q. Dr. York would also have more expertise on this

10:44:05 18 than you?

10:44:05 19 A. Correct.

10:44:06 20 Q. Okay. I think you mentioned at some point that

10:44:13 21 Mrs. Brockman signed a durable power of attorney?

10:44:16 22 A. Durable medical power of attorney.

10:44:19 23 Q. Okay. Durable medical power of attorney?

10:44:23 24 A. Correct.

10:44:27 25 Q. When was that?

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10:44:28 1 **A.** I do not know that.

10:44:29 2 **Q.** I think that you said that none of the
10:44:31 3 procedures you did -- did Mr. Brockman ever consent
10:44:33 4 to?

10:44:33 5 **A.** To the best of my knowledge.

10:44:35 6 **Q.** Okay. So when you are ordering a blood test,
10:44:38 7 she's gotta sign the paperwork for that?

10:44:40 8 **A.** Not the blood tests. We don't ask for consent
10:44:43 9 to do blood testing.

10:44:44 10 **Q.** Okay. What's the kind of procedure you are
10:44:46 11 talking about?

10:44:47 12 **A.** Invasive, where the risk -- the risks are high.
10:44:52 13 General anesthesia. Surgical procedure.

10:44:58 14 **Q.** How about colonoscopy?

10:45:03 15 **A.** Yes.

10:45:03 16 **Q.** You ordered a colonoscopy at least as part of
10:45:07 17 your initial testing for Mr. Brockman; correct?

10:45:09 18 **A.** Correct.

10:45:10 19 **Q.** You are saying your memory is -- at least as of
10:45:14 20 Spring of 2019, Mrs. Brockman is -- has a medical
10:45:18 21 power of attorney for Mr. Brockman?

10:45:20 22 **A.** I would assume so.

10:45:23 23 **Q.** And let's talk about your team. You said it
10:45:27 24 was Dr. Jankovic, Dr. York, Dr. Yu. Am I missing
10:45:34 25 anybody?

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10:45:34 1 **A.** Dr. Christopher Smith.

10:45:36 2 **Q.** Okay.

10:45:37 3 **A.** The urologist who did the UroLift®.

10:45:41 4 **Q.** Just so you don't get in trouble, obviously
10:45:44 5 there were many, many skilled people who were not
10:45:47 6 doctors that were working on this; is that fair?

10:45:48 7 **A.** Correct.

10:45:49 8 **Q.** The doctors you just listed, those are all good
10:45:52 9 doctors; right?

10:45:53 10 **A.** Correct.

10:45:53 11 **Q.** At least with respect to Dr. York, you said you
10:45:55 12 had no -- you had every confidence in her abilities?

10:45:59 13 **A.** Correct.

10:45:59 14 **Q.** And would that apply to Dr. Yu?

10:46:01 15 **A.** Correct.

10:46:02 16 **Q.** That would apply to Dr. Jankovic?

10:46:03 17 **A.** Correct.

10:46:04 18 **Q.** To Dr. Smith?

10:46:05 19 **A.** Correct. Did you include Dr. Eugene Lai?

10:46:09 20 **Q.** And -- and Dr. Lai -- is he -- is he a member
10:46:12 21 of your team or --

10:46:13 22 **A.** Yes.

10:46:14 23 **Q.** Okay.

10:46:14 24 **A.** Oh, yeah.

10:46:15 25 **Q.** So that applies to Dr. Lai as well?

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10:46:17 1 **A.** Right.

10:46:19 2 **Q.** And it's fair to say, however, that at least at
10:46:24 3 first you were all acting as clinicians?

10:46:30 4 **A.** That was our role, clinicians/clinician
10:46:36 5 specialists.

10:46:37 6 **Q.** Maybe I can ask a better question. At least at
10:46:40 7 first you are not asked to do a forensic exam?

10:46:42 8 **A.** Correct.

10:46:43 9 **Q.** Okay. It's fair to say you would look at
10:46:45 10 different things in a forensic exam than you would
10:46:47 11 in a clinical setting?

10:46:49 12 **A.** I don't know enough about forensic exams to
10:46:54 13 answer that question.

10:46:55 14 **Q.** Okay. But how about this? Would your mindset
10:46:58 15 be different going into a forensic exam --

10:47:00 16 **A.** Since I don't really know the differentiation
10:47:03 17 between the regular exam and forensic exam I can't
10:47:06 18 answer that.

10:47:06 19 **Q.** Okay. You never conducted a forensic exam?

10:47:09 20 **A.** I have not.

10:47:10 21 **Q.** Okay. So you are not aware of the distinction
10:47:12 22 between being a clinician and being a -- I think it
10:47:17 23 might be forensicist, but have to defer to someone
10:47:23 24 else there?

10:47:24 25 **A.** No, I do not know that there is a difference.

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10:47:26 1 Q. Okay. I think you mentioned that Mr. Brockman
10:47:32 2 did not tell you there was an ongoing criminal case?
10:47:37 3 A. Correct.
10:47:37 4 Q. In fact, the first time you learned about that
10:47:40 5 would have been around the time you were asked to
10:47:42 6 write the letter; is that fair?
10:47:43 7 A. That should be correct, yes.
10:47:44 8 Q. So the letter's dated January 14, 2020. So it
10:47:48 9 would have had to have been sometime before then?
10:47:51 10 A. Correct.
10:47:52 11 Q. But up until that point, you were not even
10:47:54 12 aware that he was under investigation?
10:47:56 13 A. Correct.
10:47:57 14 Q. And so, the fact that he was under
10:48:00 15 investigation, that's not something you took into
10:48:03 16 consideration in doing your care?
10:48:04 17 A. Correct.
10:48:06 18 Q. You were not aware of any motivation he might
10:48:10 19 have to feign dementia; is that fair?
10:48:17 20 A. Correct. I would not have any awareness of any
10:48:19 21 other motivation, other than receiving healthcare.
10:48:23 22 Q. Are you familiar with the term secondary
10:48:25 23 benefit?
10:48:25 24 A. Yes.
10:48:26 25 Q. Okay. And one of the things that as a doctor

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10:48:29 1 you have to consider is whether the patient -- if
10:48:32 2 there's a secondary benefit to achieving certain
10:48:34 3 diagnosis; right?

10:48:35 4 **A.** Correct.

10:48:36 5 **Q.** And that can affect your evaluation of what the
10:48:39 6 Defendant -- excuse me of what a patient tells you?

10:48:43 7 **A.** Obviously if you are concerned that there's a
10:48:46 8 secondary benefit, then you are going to get
10:48:53 9 corroborating information and additional details.

10:48:56 10 **Q.** To simplify that. If somebody comes in
10:48:59 11 complaining of back pain and you have some concern
10:49:01 12 that they're interested in getting narcotics, you
10:49:04 13 may have to do sort of a secondary investigation; is
10:49:07 14 that fair?

10:49:07 15 **A.** Correct.

10:49:09 16 **Q.** And so, in this case you did not consider that
10:49:12 17 Mr. Brockman may have a secondary benefit to avoid
10:49:15 18 this criminal case; is that fair?

10:49:17 19 **A.** That is correct.

10:49:18 20 **Q.** Because you were not aware of the criminal
10:49:20 21 case?

10:49:20 22 **A.** That is correct.

10:49:21 23 **Q.** And I think you testified that even after you
10:49:23 24 were aware of the criminal case, that's not
10:49:27 25 something you took into consideration with his care

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10:49:29 1 going forward?

10:49:30 2 **A.** That's correct.

10:49:38 3 **Q.** I'd like to shift gears and talk a little bit
10:49:41 4 about how you prepared your testimony today. I
10:49:44 5 think you mentioned -- well, how did you prepare for
10:49:46 6 your testimony today?

10:49:48 7 **A.** First, we had just mentioned that the defense
10:49:55 8 team met with me in my office two weeks ago Friday,
10:50:03 9 okay. They -- the defense team had met with me in
10:50:08 10 my office once prior to that, and then, um, I have
10:50:13 11 had communications with them by phone and -- and
10:50:16 12 e-mails.

10:50:19 13 **Q.** How many communications by phone or e-mail, if
10:50:21 14 you can give us a ballpark?

10:50:25 15 **A.** Probably 20.

10:50:29 16 **Q.** And is that like --

10:50:31 17 **A.** Going back to the timeline that you outlined
10:50:34 18 when they made me aware, or somehow I became aware
10:50:39 19 that there was an investigation and potential legal
10:50:46 20 action.

10:50:46 21 **Q.** I'm not going to hold you to the date, but
10:50:48 22 that's sometime like December of 2019?

10:50:51 23 **A.** Must be, yeah.

10:50:52 24 **Q.** Okay. So 20 communications by phone and e-mail
10:50:58 25 and the two meetings?

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10:50:59 1 **A.** Right.

10:50:59 2 **Q.** Anything else?

10:51:00 3 **A.** No.

10:51:03 4 **Q.** These phone calls, is this like a ten-minute --
10:51:06 5 report or several hours sort of thing?

10:51:09 6 **A.** No, no, no. These are very, very short,
10:51:13 7 concise logistical issues.

10:51:16 8 **Q.** Okay. And you -- you created a declaration in
10:51:20 9 this case in support of the motion to transfer
10:51:24 10 venue?

10:51:24 11 **A.** Correct.

10:51:28 12 **Q.** Did you share a draft of that declaration with
10:51:30 13 them prior to completing it?

10:51:32 14 **A.** Yes.

10:51:32 15 **Q.** And did they give you edits?

10:51:34 16 **A.** I think it was the other way around. No -- if
10:51:37 17 I recall correctly, it was the other way around.

10:51:39 18 **Q.** Okay. So if I understand, they gave you sort
10:51:43 19 of, "These are the points we would like you to hit"?

10:51:48 20 **A.** Correct.

10:51:49 21 **Q.** And you said, "Well, okay. This one I can say
10:51:52 22 is true" --

10:51:53 23 **A.** Or "I would prefer saying it this way as
10:51:55 24 opposed to this way."

10:51:56 25 **Q.** Okay. So it's fair to say -- at least with

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10:51:58 1 your draft declaration -- you were not the
10:52:03 2 initiator?

10:52:04 3 **A.** That is correct.

10:52:04 4 **Q.** Okay. And was that the same process for the
10:52:09 5 letter that was sent to the Government?

10:52:11 6 **A.** Remind me again of that letter?

10:52:13 7 **Q.** Your January 14, 2020, letter. I think you
10:52:18 8 testified that you knew that was going to be sent to
10:52:22 9 the Government; is that fair? Do you want a copy in
10:52:28 10 front of you?

10:52:29 11 **A.** Yeah. May I please see that?

10:52:32 12 **Q.** Of course.

10:52:33 13 **A.** Because you sort of lost me there on what that
10:52:35 14 detail means.

10:52:36 15 **Q.** Lot of paperwork in this case. I'm going to
10:52:38 16 show the witness what's in evidence as Exhibit 52,
10:52:43 17 and I'm going to show him Exhibit F2-82 --

10:52:49 18 THE COURT: I'm sorry?

10:52:50 19 MR. LANGSTON: I'm sorry, F2-82.

10:52:52 20 THE COURT: Okay.

10:53:18 21 THE WITNESS: Okay. If may I ask if
10:53:20 22 you could repeat your question now that I have the
10:53:22 23 letter in front of me?

10:53:24 24 MR. LANGSTON:

10:53:24 25 **Q.** Sure. I was trying to understand the process

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10:53:27 1 by which this letter was created. I think you said
10:53:31 2 that with the declaration, you kind of got -- I'll
10:53:34 3 use the word talking points -- and then, you know,
10:53:37 4 you sort of corrected it off of that?

10:53:39 5 **A.** Correct. Because if you remember, that
10:53:41 6 declaration is very legal. You know, I'm not going
10:53:44 7 to be able to draft a legal document like that.

10:53:46 8 **Q.** Sure.

10:53:47 9 **A.** But this -- no, this is -- Kathy Keneally asked
10:53:53 10 me to generate this letter, and it was designed to
10:54:05 11 be submitted to the Department of Justice. And this
10:54:07 12 is just -- well, to the best of my knowledge, I
10:54:13 13 don't remember that Kathy had any appreciable input
10:54:17 14 on this at all. I don't think so.

10:54:21 15 **Q.** Did you send them a draft prior to the final
10:54:24 16 version?

10:54:26 17 **A.** I must have, just to be sure that I wasn't
10:54:31 18 doing something that was really, really
10:54:33 19 inappropriate for communication with the Department
10:54:37 20 of Justice.

10:54:37 21 **Q.** Do you remember whether they had any edits?

10:54:50 22 **A.** I don't remember anything substantive that
10:54:53 23 would have -- I remember discussions on the phone
10:54:58 24 before I dictate the letter. This is voice
10:55:03 25 recognition technology.

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10:55:06 1 And the discussions on the phone
10:55:08 2 sort of hinged around, "Is this dementia from
10:55:13 3 Parkinson's? Is this dementia from Alzheimer's? Is
10:55:17 4 this dementia from Lewy bodies dementia? Is this a
10:55:21 5 blend of all of those?"

10:55:23 6 And that's really the only thing I
10:55:25 7 remember in terms of discussions about the letter.
10:55:30 8 And then I finally made my decision about how to
10:55:34 9 state the final conclusion.

10:55:38 10 Q. Okay. So let me see if I can understand this.
10:55:41 11 So prior to the drafting of the letter there was a
10:55:45 12 phone call, and there was sort of discussion as --
10:55:48 13 sort of the information that would go into the --
10:55:50 14 into the letter?

10:55:52 15 A. I mean -- well, yes. Correct. What -- what
10:55:54 16 the content should be, how comprehensive it should
10:55:58 17 be. What points should be included -- that kind of
10:56:05 18 conversation.

10:56:05 19 Q. Okay. When you say what points should be
10:56:08 20 included so, "Make sure you talk about this," and
10:56:12 21 "Make sure you talk about that" -- that sort of
10:56:14 22 thing?

10:56:14 23 A. Correct.

10:56:14 24 Q. Who else was on the phone call?

10:56:16 25 A. Nobody.

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10:56:16 1 Q. So it was just you and --

10:56:18 2 A. Kathy.

10:56:19 3 Q. Okay. Do you remember which of these points
10:56:23 4 she told you to include?

10:56:25 5 A. I -- I think it mostly was the other way around
10:56:28 6 where it wasn't that Kathy was telling me what to
10:56:33 7 include, it was my questions to her of, "Okay. What
10:56:37 8 -- what are the elements of this letter that should
10:56:39 9 be included?"

10:56:43 10 Because this is, as you can tell --
10:56:45 11 I mean, this is going -- ultimately going to the
10:56:48 12 Department of Justice. And so, it had to have the
10:56:51 13 relevant points of the Department of Justice -- that
10:56:54 14 the Department of Justice needed.

10:56:55 15 Q. Okay. Who decided what the relevant points
10:56:57 16 were that the Department of Justice needed?

10:57:00 17 A. It's going to be Kathy's guidance in terms of,
10:57:03 18 "These are the points that need to be included," and
10:57:06 19 then I followed through with that.

10:57:08 20 Q. Did she tell you anything to leave out?

10:57:11 21 A. No. I don't remember deleting anything.

10:57:15 22 Q. Well, prior -- you had this discussion prior to
10:57:18 23 actually writing the letter; is that fair?

10:57:19 24 A. Correct.

10:57:20 25 Q. So there wouldn't have been anything to delete

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10:57:22 1 at that point; right?

10:57:23 2 **A.** Correct.

10:57:23 3 **Q.** So did she tell you on the phone call -- were
10:57:27 4 there any ideas that you had, "Maybe I should
10:57:29 5 include this," and she said, "No, don't include
10:57:33 6 that"?

10:57:33 7 **A.** No. Again, I think my conversation -- my
10:57:36 8 telephone conversation from January of 2020, mostly
10:57:40 9 focused on is the dementia related to the
10:57:47 10 Parkinson's disease or not related to the
10:57:49 11 Parkinson's disease and the different kind of
10:57:51 12 neurodegenerative process. So that was it in a
10:57:54 13 nutshell.

10:57:54 14 **Q.** Okay. And I'll turn your attention to the --
10:58:00 15 the first paragraph on the second page.

10:58:02 16 **A.** Okay.

10:58:05 17 **Q.** And I'll put that up on the ELMO.

10:58:08 18 **A.** Is that Parkinson's disease or vascular
10:58:10 19 Parkinson's?

10:58:11 20 **Q.** The one above it.

10:58:12 21 **A.** Above it? Okay.

10:58:13 22 **Q.** You see the, "They also concluded his ongoing
10:58:19 23 cognitive impairment is consistent with Lewy bodies
10:58:22 24 dementia"?

10:58:23 25 **A.** Right.

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10:58:23 1 Q. "These diagnoses cannot be totally confirmed,
10:58:27 2 except at autopsy of the brain after the death of
10:58:30 3 the patient."

10:58:33 4 A. Correct.

10:58:33 5 Q. Was that one of the things she told you to make
10:58:35 6 sure you included?

10:58:35 7 A. That's a statement of fact.

10:58:37 8 Q. Oh, I understand that you believe everything in
10:58:40 9 this letter is sort of a statement of fact.

10:58:42 10 A. Yeah.

10:58:43 11 Q. So was that one of the facts that you discussed
10:58:46 12 on your phone call prior?

10:58:48 13 A. Not to the best of my knowledge.

10:58:50 14 Q. Okay.

10:58:52 15 A. No.

10:58:52 16 Q. Did you discuss this letter with anyone else
10:58:55 17 other than Ms. Keneally?

10:58:56 18 A. No.

10:58:57 19 Q. Did you have any conversation with any of the
10:59:00 20 other members of the team --

10:59:02 21 A. No.

10:59:02 22 Q. -- about what to include in the letters?

10:59:04 23 A. No. Nor were they copied on this letter, as
10:59:09 24 far as I know.

10:59:09 25 Q. I'll put on the ELM0 Exhibit I of 82. This is

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10:59:23 1 the letter Dr. Jankovic wrote to Ms. Keneally on the
10:59:26 2 same day.

10:59:27 3 **A.** Okay.

10:59:27 4 **Q.** And you didn't discuss -- Dr. Jankovic didn't
10:59:31 5 discuss this letter with you; is that fair?

10:59:33 6 **A.** No. No, I did not know he prepared this
10:59:35 7 letter.

10:59:35 8 **Q.** Okay. Looking at the fourth paragraph here,
10:59:39 9 "Notably, there is no test that can be administered
10:59:42 10 prior to autopsy that can confirm a diagnosis of
10:59:46 11 either Parkinson's disease or Lewy bodies dementia"?

10:59:52 12 **A.** Correct.

10:59:52 13 **Q.** So you didn't talk about that --

10:59:53 14 **A.** No.

10:59:54 15 **Q.** -- with Dr. Jankovic?

10:59:57 16 **A.** No.

10:59:57 17 **Q.** And you don't remember that being one of the
10:59:59 18 items Ms. Keneally told you to include in your
11:00:01 19 letter?

11:00:01 20 **A.** No.

11:00:02 21 **Q.** And I think both you and Dr. Jankovic also
11:00:14 22 discussed confabulation in your letters?

11:00:16 23 **A.** In a letter?

11:00:17 24 **Q.** In your letter -- sorry, I shouldn't ask you
11:00:19 25 about Dr. Jankovic's letter. In your letter, you

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11:00:22 1 discussed confabulation; is that fair?

11:00:26 2 **A.** You are asking me if I discussed with Kathy
11:00:30 3 Keneally --

11:00:31 4 **Q.** I'm asking is it in the letter itself?

11:00:34 5 **A.** I don't remember any reference to that. Do you
11:00:44 6 see any reference to confabulation in here?

11:00:51 7 **Q.** Direct your attention to the second page.

11:00:56 8 **A.** Both.

11:01:03 9 **Q.** And final paragraph on the second page?

11:01:26 10 **A.** Ah, okay. Right there. Okay. "Report on past
11:01:30 11 events may be distorted by the high risk of
11:01:34 12 confabulation."

11:01:35 13 Okay. Okay.

11:01:36 14 **Q.** And that's a true statement; right?

11:01:39 15 **A.** Yes.

11:01:40 16 **Q.** Okay. Was that one of the things that
11:01:42 17 Ms. Keneally asked you to include in your letter?

11:01:49 18 **A.** I do not -- I cannot answer that. I don't
11:01:54 19 remember.

11:02:01 20 **Q.** Okay. And then, I'll show you Dr. Jankovic's
11:02:05 21 letter. On the final paragraph of the first page of
11:02:10 22 Dr. Jankovic's letter he also writes, "Confabulation
11:02:15 23 differs from provocation or lying. Confabulation is
11:02:17 24 a symptom of cognitive impairment, and is not
11:02:20 25 voluntary."

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11:02:22 1 So your testimony is that you and
11:02:24 2 Dr. Jankovic did not consult at all on these
11:02:27 3 letters?

11:02:27 4 **A.** That is correct. I -- this is the first time
11:02:30 5 I've seen Dr. Jankovic's letter.

11:02:37 6 **Q.** Okay. Now, it's fair to say you've had -- I
11:02:41 7 think we said something like 22 discussions with
11:02:44 8 Defense Counsel about this case?

11:02:52 9 **A.** Yes.

11:02:53 10 **Q.** And you've never spoken to the Government about
11:02:55 11 this?

11:02:55 12 **A.** No -- well, I've had conversations with the
11:02:58 13 Denver office. Two special agents, but no lawyers.

11:03:02 14 **Q.** Okay. And through your attorney, the
11:03:04 15 Government reached out to you and asked you to speak
11:03:07 16 about this case back in September; is that fair?

11:03:09 17 **A.** Correct.

11:03:10 18 **Q.** And you declined?

11:03:12 19 **A.** Correct.

11:03:12 20 **Q.** And the Government also asked you to speak to
11:03:15 21 its experts to help the Court in evaluating this
11:03:21 22 case?

11:03:21 23 **A.** Asked me to speak to whom?

11:03:24 24 **Q.** The Government's experts in helping them
11:03:26 25 formulate their opinions.

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11:03:28 1 **A.** That is news to me. What expert would be
11:03:33 2 physician or --

11:03:35 3 **Q.** Dr. Dietz, Dr. Denney and Dr. Darby?

11:03:38 4 **A.** No. Those names are totally foreign.

11:03:42 5 **Q.** Okay. So on September 27th -- or on or about
11:03:48 6 September 27, 2021, your attorney did not tell you
11:03:51 7 that Dr. Pool [SIC] -- that the Government asked you
11:03:56 8 to speak to its experts?

11:03:58 9 **A.** No, I -- I was not made aware of that.

11:04:01 10 **Q.** I'll ask you this -- I'll mark this as 155.
11:04:14 11 Show it to the witness.

11:04:20 12 MR. LANGSTON: May I approach, Your
11:04:21 13 Honor?

11:04:21 14 THE COURT: You may approach.

11:04:25 15 THE WITNESS: Thank you.

11:04:50 16 MR. LANGSTON:

11:04:50 17 **Q.** I have a number of papers in front of me, so
11:04:54 18 I'm going to put it on the ELM0. I wanted to make
11:04:56 19 sure that's what I handed to you as 155?

11:05:00 20 **A.** There are no -- am I missing something? I
11:05:04 21 don't see --

11:05:05 22 **Q.** Do you see the e-mail from -- on September 27th
11:05:08 23 at 10:20 a.m. to Mr. Banfield?

11:05:12 24 **A.** Yes, uh-huh.

11:05:13 25 **Q.** My question is did Mr. Banfield forward this

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11:05:16 1 question to meet with the prosecution team and its
11:05:18 2 experts to you?

11:05:23 3 MR. VARNADO: Your Honor, object to
11:05:24 4 this as hearsay. Dr. Pool's not anywhere on this
11:05:28 5 communication, and it's not in evidence. I object
11:05:30 6 to this.

11:05:31 7 THE COURT: Who is Mr. Banfield again?

11:05:34 8 MR. LANGSTON:

11:05:34 9 Q. Mr. Banfield's your attorney?

11:05:35 10 A. Mr. Banfield is Associate General Counsel for
11:05:41 11 Baylor College of Medicine.

11:05:42 12 THE COURT: He testified earlier he
11:05:44 13 took advice from Mr. Banfield, so objection's
11:05:46 14 overruled. You can ask him about the e-mail.

11:05:53 15 MR. LANGSTON:

11:05:53 16 Q. So did Mr. Banfield forward this request to you
11:05:57 17 asking whether you would meet with the prosecution
11:05:59 18 team or its experts?

11:06:00 19 A. The answer is no, but he did talk about it.
11:06:06 20 The reason is that the person who Ryan Ricky -- the
11:06:12 21 person who reached out to me was Evan Garrett
11:06:19 22 (phonetic). And Evan Garrett had called and asked
11:06:24 23 to schedule a meeting.

11:06:27 24 And I called Mr. Banfield and asked
11:06:29 25 him for his legal opinion as to what would be most

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11:06:32 1 appropriate.

11:06:33 2 Q. Okay. So did Mr. Banfield forward the request
11:06:38 3 to you that the Government's experts had asked to
11:06:41 4 meet with you?

11:06:42 5 A. There aren't any experts here.

11:06:43 6 Q. Do you see the line, "Is Dr. Pool willing to
11:06:46 7 meet with the prosecution team or its experts prior
11:06:49 8 to the hearing"?

11:06:50 9 A. Oh, I see. Thank you very much. Okay. And
11:06:55 10 the answer is the experts is -- was not addressed,
11:07:00 11 but there was a verbal communication in which
11:07:02 12 Mr. Banfield said that you all had contacted him and
11:07:07 13 he had declined.

11:07:08 14 Q. Okay. Did you -- and so, I want to make sure
11:07:14 15 -- is it your decision not to talk or was it
11:07:16 16 Mr. Banfield's on your behalf?

11:07:17 17 A. Mr. Banfield.

11:07:18 18 Q. Okay. So Mr. Banfield told you the
11:07:26 19 Government's experts wanted to speak with you, and
11:07:30 20 that -- Mr. Banfield told you the Government's
11:07:33 21 experts wanted to speak with you?

11:07:34 22 A. No.

11:07:35 23 Q. Okay. He just told you that he had declined on
11:07:38 24 your behalf to speak with the Government experts?

11:07:40 25 A. No. He told me that he had declined a meeting

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11:07:46 1 between the lawyers for the prosecution, nothing
11:07:52 2 about any physician experts -- or experts --
11:07:56 3 physician or non-experts.

11:07:57 4 Q. You weren't even aware the Government had
11:07:59 5 experts in this case?

11:08:00 6 A. Correct.

11:08:01 7 Q. Okay. Did you have any discussion with the
11:08:05 8 defense experts in this case?

11:08:07 9 A. No, I have not -- I have not had any
11:08:16 10 interaction with individuals who are experts for
11:08:23 11 Defense. My contact has been only with legal
11:08:28 12 counsel for the defense.

11:08:29 13 Q. Okay. So you didn't speak to Dr. Agronin?

11:08:32 14 A. No.

11:08:32 15 Q. You didn't speak to Dr. Guilmette?

11:08:34 16 A. No.

11:08:36 17 Q. Dr. Wisniewski?

11:08:39 18 A. No.

11:08:40 19 Q. Dr. Whitlow?

11:08:41 20 A. No.

11:08:41 21 Q. Okay. Let's talk a little bit more about
11:08:46 22 Dr. Lai.

11:08:47 23 A. Okay.

11:08:47 24 Q. I think Defense Counsel asked you if you had
11:08:53 25 spoken with Dr. Lai; is that fair?

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11:08:54 1 **A.** Correct.

11:08:55 2 **Q.** And he showed you Dr. Lai's -- Defense

11:09:01 3 Exhibit 48, the October 7, 2021 exam that Dr. Lai
11:09:06 4 did?

11:09:06 5 **A.** Correct.

11:09:07 6 **Q.** Okay. You said that Dr. Lai was a member of
11:09:09 7 the treatment team?

11:09:10 8 **A.** Correct.

11:09:10 9 **Q.** That you viewed Dr. Lai as the number two
11:09:17 10 Parkinson's person in Houston?

11:09:19 11 **A.** Right.

11:09:20 12 **Q.** Houston has some pretty good doctors?

11:09:23 13 **A.** Right.

11:09:24 14 **Q.** And getting back to your letter for a second.

11:09:29 15 It's fair to say as of January of 2020, you believed
11:09:36 16 that Mr. Brockman had mild to moderate dementia?

11:09:38 17 **A.** Correct.

11:09:40 18 **Q.** And members of your team, Dr. York thought that
11:09:44 19 going back to March of 2019; is that fair?

11:09:47 20 **A.** Correct.

11:09:47 21 **Q.** And so, was it fair to say that in your opinion
11:09:51 22 he had mild to moderate dementia going back to
11:09:54 23 March?

11:09:54 24 **A.** Correct.

11:09:55 25 **Q.** Okay. And after you wrote that letter -- or

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11:10:01 1 actually, prior to you writing that letter Dr. Lai
11:10:04 2 had examined Mr. Brockman; is that fair?

11:10:08 3 **A.** Yes. Right, because it was 2019. Mm-hmm.

11:10:12 4 **Q.** And Dr. Lai examined Mr. Brockman for the first
11:10:15 5 time on January 8th of 2020?

11:10:19 6 **A.** Okay.

11:10:21 7 **Q.** Well, you viewed Dr. Lai's medical records in
11:10:24 8 this case; right?

11:10:25 9 **A.** I do.

11:10:26 10 **Q.** Because you are the quarterback of the team, so
11:10:29 11 you've gotta see, you know -- I don't know how to
11:10:32 12 extend that analogy, but you've gotta see the
11:10:35 13 medical records; is that fair?

11:10:35 14 **A.** Correct.

11:10:36 15 **Q.** Okay. So you've seen the January 8, 2020,
11:10:40 16 medical records?

11:10:42 17 **A.** On or about the time it was generated by
11:10:44 18 Dr. Lai.

11:10:45 19 **Q.** Okay. Did you see those prior to when you
11:10:48 20 finished your letter with Ms. Keneally?

11:10:52 21 **A.** Not very likely.

11:10:54 22 **Q.** Okay. Um, and in January of 2020 -- and I'll
11:11:00 23 mark this as 156 -- have you seen this before?

11:11:24 24 **MR. VARNADO:** Your Honor, just ask that
11:11:26 25 if it's a multipage document that he be given a copy

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11:11:29 1 to look at. It's easier than the screen.

11:11:31 2 THE COURT: Does he have the entire
11:11:33 3 document?

11:11:33 4 MR. LANGSTON: I can show him the
11:11:35 5 entire document.

11:11:36 6 THE WITNESS: Could I?

11:11:37 7 THE COURT: Do you have an extra one
11:11:38 8 for him to look at?

11:11:39 9 MR. LANGSTON: Sadly I do not, Your
11:11:41 10 Honor, but I can show it to him and ask the
11:11:43 11 questions based on that.

11:11:45 12 THE WITNESS: Okay. Thank you. Yes,
11:12:09 13 um, I re -- I'm sure I reviewed this in the first
11:12:16 14 quarter of 2020.

11:12:17 15 MR. LANGSTON:

11:12:17 16 Q. Okay. And so, that's Dr. Lai's examination
11:12:19 17 from January 8th of 2020?

11:12:21 18 A. Right.

11:12:21 19 Q. And Dr. Lai disagrees with your diagnosis; is
11:12:24 20 that fair?

11:12:24 21 A. Which diagnosis?

11:12:26 22 Q. The diagnosis of mild to moderate dementia?

11:12:56 23 A. I'm looking for Dr. Lai's --

11:12:58 24 Q. Go to the blue tab. It may help.

11:13:01 25 A. Okay -- oh. And it highlighted, "Diagnosis of

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11:13:07 1 Parkinson's disease with mild to moderate cognitive
11:13:09 2 impairment."

11:13:15 3 Okay. "Therefore his clinical
11:13:18 4 findings are most consistent with the diagnosis of
11:13:20 5 Parkinson's disease, with mild to moderate cognitive
11:13:25 6 impairment. Differential diagnosis including
11:13:27 7 dementia with Lewy bodies, vascular parkinsonism,
11:13:30 8 secondary parkinsonism, or parkinsonism-plus
11:13:35 9 syndrome."

11:13:36 10 I mean, the -- my interpretation of
11:13:40 11 that sentence is the we're totally on the same page.

11:13:45 12 Q. I want to make sure I understand your
11:13:47 13 testimony. Dr. Lai says that he has mild to
11:13:49 14 moderate cognitive impairment?

11:13:50 15 A. Okay.

11:13:51 16 Q. Is that fair?

11:13:52 17 A. Correct.

11:13:58 18 Q. There's a difference between mild to moderate
11:14:01 19 cognitive impairment and mild to moderate dementia;
11:14:03 20 is that fair?

11:14:03 21 A. Not entirely, because I would say that in, um,
11:14:11 22 generating clinic notes you can inappropriately
11:14:15 23 exchange expressions that mean the same thing. And
11:14:20 24 based upon -- based upon the way this is written --
11:14:31 25 and if you talk to Eugene Lai I would imagine he

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11:14:34 1 would say, "Yeah, I understand," it would have been
11:14:38 2 better to say mild to moderate dementia.

11:14:40 3 Q. Your testimony is mild to moderate cognitive
11:14:42 4 impairment is the same thing as mild to moderate
11:14:44 5 dementia?

11:14:46 6 A. The answer -- no, no, no. What I'm saying is
11:14:48 7 the way -- the way clinic notes are generated --
11:14:52 8 because when you look at the rest of that -- that
11:14:56 9 paragraph, "Dementia with Lewy bodies" -- et cetera,
11:15:00 10 et cetera -- I think he's saying the same thing.

11:15:02 11 THE COURT: One quick question. Is
11:15:03 12 this doctor going to be appearing?

11:15:06 13 MR. LANGSTON: We don't know.

11:15:06 14 THE COURT: Is this doctor going to be
11:15:08 15 appearing?

11:15:08 16 MR. VARNADO: We may not call him,
11:15:10 17 Judge.

11:15:11 18 THE COURT: Okay.

11:15:11 19 MR. VARNADO: Just in the interests of
11:15:13 20 time, because I think it might be cumulative to
11:15:16 21 what's in the record here.

11:15:17 22 THE COURT: I'm just curious, because
11:15:20 23 there's a discrepancy if the doctor will appear.

11:15:24 24 MR. LANGSTON: He's on the Defense's
11:15:25 25 witness list, but if we're cutting him for time --

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11:15:28 1 MR. VARNADO: Yeah.

11:15:28 2 MR. LANGSTON: -- then this is one of a
11:15:31 3 series of examinations by Dr. Lai. The Defense
11:15:33 4 offered the last one, so we figured we're going to
11:15:36 5 explore the first.

11:15:38 6 MR. VARNADO: More than happy to have
11:15:40 7 the first three explored, but I would note Dr. Lai
11:15:42 8 was originally on the Government's witness list and
11:15:44 9 they pulled him off --

11:15:45 10 THE COURT: Okay.

11:15:46 11 MR. VARNADO: -- anyway, after his last
11:15:48 12 diagnosis.

11:15:48 13 THE COURT: Not a problem. I'm not
11:15:49 14 really worried about who's list. We're all making
11:15:56 15 assumptions about what he said and how he wrote it,
11:15:58 16 and nobody says they've already talked to him about
11:16:00 17 it. So I'm just wondering if he's going to be
11:16:02 18 present.

11:16:06 19 MR. LANGSTON:

11:16:07 20 Q. So it's fair to say that in January of 2020,
11:16:09 21 Dr. Lai says, "Mild to moderate cognitive
11:16:14 22 impairment"?

11:16:14 23 A. That is so stated.

11:16:15 24 Q. Okay. And your interpretation by that is he
11:16:17 25 means mild to moderate dementia?

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11:16:19 1 **A.** Correct.

11:16:19 2 MR. LANGSTON: I'll offer 156.

11:16:22 3 MR. VARNADO: No objection.

11:16:23 4 THE COURT: Without objection, 156 is
11:16:25 5 admitted.

11:16:25 6 THE WITNESS: Thank you.

11:16:27 7 MR. LANGSTON:

11:16:27 8 **Q.** And show the witness 157, which is Dr. Lai's
11:16:30 9 notes from February 12, 2020.

11:16:36 10 **A.** Okay don't I need to go to the blue tab.

11:16:39 11 **Q.** First, is that his notes from February 12,
11:16:44 12 2020?

11:16:45 13 **A.** Yes.

11:16:47 14 **Q.** You've seen those?

11:16:49 15 **A.** Yes.

11:16:50 16 **Q.** And you took that into consideration as part of
11:16:53 17 your examination of Mr. Brockman?

11:16:56 18 **A.** Yes.

11:16:57 19 **Q.** Okay. And again -- now you can go to the blue
11:17:01 20 tab?

11:17:02 21 **A.** Yep.

11:17:03 22 **Q.** And again, Dr. Lai says, "Mild to moderate
11:17:07 23 cognitive impairment"?

11:17:08 24 **A.** Mild cognitive impairment.

11:17:10 25 **Q.** Mild cognitive impairment?

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11:17:12 1 **A.** Correct.

11:17:12 2 **Q.** And -- and that's different than mild dementia;
11:17:18 3 is that fair?

11:17:19 4 **A.** I would be uncomfortable with assuming that
11:17:25 5 he's not using the terms interchangeably.

11:17:29 6 **Q.** Okay. So Dr. Lai -- you said he's the second
11:17:32 7 best doctor in Houston, right, for Parkinson's?

11:17:36 8 **A.** For Parkinson's, right.

11:17:37 9 **Q.** So he knows the difference between mild
11:17:40 10 cognitive impairment and dementia; right?

11:17:41 11 **A.** I guess the question is how he's using the
11:17:45 12 language.

11:17:45 13 **Q.** Well, it's important to you -- to understand in
11:17:48 14 quarterbacking Mr. Brockman's care --

11:17:50 15 **A.** Right.

11:17:50 16 **Q.** -- whether he has mild cognitive impairment or
11:17:53 17 dementia; right?

11:17:55 18 **A.** The net -- the net of the performance of the
11:18:01 19 patient is still the most important denominator.

11:18:05 20 **Q.** Okay. In fact, one of the distinctions between
11:18:08 21 mild cognitive impairment and dementia is that at
11:18:12 22 the dementia stage the disease has started to affect
11:18:16 23 activities of daily living; is that fair?

11:18:20 24 **A.** Both can.

11:18:21 25 **Q.** Okay. Well, what is your understanding of the

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11:18:24 1 difference between mild cognitive impairment and
11:18:25 2 dementia?

11:18:26 3 **A.** Well, part of it is that the categorization so
11:18:34 4 that you -- when you declare somebody cognitively
11:18:40 5 impaired, you are unable to assign a diagnostic
11:18:44 6 category to them.

11:18:47 7 So you are saying -- okay. You
11:18:50 8 don't know exactly what -- in that first note you
11:18:57 9 gave me you don't know exactly what Eugene Lai is
11:19:00 10 trying to communicate, because he may be saying,
11:19:05 11 "Yes, Parkinson's disease with cognitive
11:19:10 12 impairment."

11:19:10 13 But I don't know whether this
11:19:11 14 dementia is Lewy bodies, or vascular, or
11:19:15 15 Alzheimer's -- on and on. So he's -- he's -- he's
11:19:20 16 pulling back from the categorical diagnosis of which
11:19:24 17 dementia and just telling you that, "You are dealing
11:19:29 18 with a dementia process," but he can't tell you
11:19:32 19 which one it is. He's not that confident.

11:19:34 20 **Q.** Okay. And -- I mean, did that affect your
11:19:37 21 diagnosis and subsequent treatment of Mr. Brockman
11:19:39 22 that he wasn't confident? I'm sorry. You have to
11:19:44 23 answer out loud so the court reporter can hear you?

11:19:46 24 **A.** I'm sorry, no. Because it -- you realize with
11:19:50 25 all of the elements of the cognitive changes

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11:19:56 1 everybody has been uncertain as to is it Lewy bodies
11:20:01 2 dementia, is it vascular dementia, is it Alzheimer's
11:20:04 3 disease, is it Parkinson's disease with parkinsonism
11:20:10 4 dementia?

11:20:11 5 And that's -- I think much of what
11:20:13 6 you are reading is the uncertainty of which way to
11:20:16 7 declare the cognitive impairment.

11:20:18 8 Q. Okay. Did you get on the phone with Dr. Lai to
11:20:21 9 clear this up?

11:20:22 10 A. No.

11:20:22 11 Q. Okay. And so, you are going based on the
11:20:25 12 medical records; right?

11:20:26 13 A. Right.

11:20:26 14 Q. And the medical records say mild cognitive
11:20:29 15 impairment; is that fair?

11:20:30 16 A. Correct.

11:20:31 17 Q. Okay.

11:20:32 18 MR. LANGSTON: I'll offer 157.

11:20:34 19 THE COURT: Any objection?

11:20:35 20 MR. VARNADO: No objection.

11:20:35 21 THE COURT: Without objection, 157 is
11:20:37 22 admitted.

11:20:42 23 MR. LANGSTON: I'm going to show the
11:20:44 24 witness 158, which is the Dr. Lai records from
11:20:53 25 February 22nd of 2021.

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11:20:56 1 MR. VARNADO: I think these are all in
11:20:57 2 as defense exhibits, but if you want to remark them.

11:21:11 3 MR. LANGSTON:

11:21:11 4 Q. Okay. Records from February 2021, that's this
11:21:15 5 year?

11:21:15 6 A. Mm-hmm.

11:21:20 7 Q. You reviewed these in evaluating Mr. Brockman's
11:21:22 8 treatment?

11:21:22 9 A. Correct.

11:21:23 10 Q. If you'll turn to the blue tab again here he
11:21:26 11 says, "Mild cognitive impairment"; is that fair?

11:21:29 12 A. That is correct.

11:21:30 13 Q. And in the clinical follow up, he actually does
11:21:33 14 not mention the word dementia in there; does he?

11:21:37 15 A. Correct.

11:21:38 16 MR. LANGSTON: I'll offer 158.

11:21:39 17 MR. VARNADO: No objection.

11:21:40 18 THE COURT: Without objection, 158 is
11:21:42 19 admitted.

11:21:56 20 MR. LANGSTON:

11:21:57 21 Q. And then we'll turn now to Defense 48. Do you
11:22:04 22 know how long the examination was by Dr. Lai in
11:22:08 23 October 7th of 2021?

11:22:10 24 A. You mean time wise?

11:22:13 25 Q. Yes.

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11:22:14 1 **A.** I do not.

11:22:16 2 MR. LANGSTON: Going to show the
11:22:17 3 witness 48. This is Defense 48.

11:22:26 4 **Q.** If you'll turn to the last page. Was it
11:22:39 5 42 minutes?

11:22:44 6 **A.** Yes.

11:22:44 7 **Q.** And that includes a review of previous medical
11:22:50 8 records; right?

11:22:51 9 **A.** Correct.

11:22:51 10 **Q.** That included MoCA testing?

11:22:54 11 **A.** Correct.

11:22:54 12 **Q.** That included care coordination?

11:22:57 13 **A.** Correct.

11:22:57 14 **Q.** The discussion of adjustments to medication?

11:23:02 15 **A.** Correct.

11:23:03 16 **Q.** That included the counseling and education part
11:23:06 17 of the visit where they told Mr. Brockman, "These
11:23:09 18 are the results and what you have to do as a result
11:23:11 19 of that"; is that fair?

11:23:12 20 **A.** Correct.

11:23:12 21 **Q.** And it actually included Dr. Lai doing the
11:23:15 22 paperwork?

11:23:16 23 **A.** Doing the paperwork?

11:23:17 24 **Q.** The documentation of the visit.

11:23:22 25 **A.** Yeah, it does. It states that.

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11:23:24 1 Q. Okay. So all of those things, including his
11:23:27 2 evaluation, that all took place in 42 minutes; is
11:23:30 3 that fair?

11:23:31 4 A. That's so stated.

11:23:33 5 Q. Okay. All right. And we're done with that, so
11:23:49 6 you can -- you can keep a copy of it if you like,
11:23:52 7 but I'm not going to ask you any more questions
11:23:54 8 about that.

11:23:55 9 A. Okay. Thank you.

11:24:04 10 Q. All right. Now, you've been practicing for a
11:24:06 11 number of years; is that fair?

11:24:07 12 A. Correct.

11:24:08 13 Q. How many?

11:24:08 14 A. In Houston, 44.

11:24:10 15 Q. Okay. And so, 44 years means you sort of cross
11:24:14 16 over the introduction of the *WebMD*; is that fair?

11:24:18 17 A. Yes. Yeah.

11:24:19 18 Q. You are familiar with that website?

11:24:21 19 A. Yeah.

11:24:21 20 Q. It's a website where your patients go to, and
11:24:24 21 look up symptoms and then come terrified to you; is
11:24:28 22 that fair?

11:24:28 23 A. One interpretation.

11:24:30 24 Q. Okay. And it's fair to say that that -- the --
11:24:34 25 the existence of *WebMD* and other websites is

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11:24:39 1 something you have to take into consideration when
11:24:41 2 evaluating a patient; right?

11:24:43 3 **A.** How do I take it into consideration? What is
11:24:46 4 the question?

11:24:47 5 **Q.** Is it something you have to take into
11:24:48 6 consideration that maybe they looked this up on the
11:24:52 7 internet?

11:24:52 8 **A.** It's not -- I mean, I usually don't take that
11:24:55 9 into consideration.

11:24:56 10 **Q.** Have you ever experienced a patient coming to
11:24:59 11 you with symptoms they looked up on the internet?

11:25:03 12 **A.** Yes.

11:25:05 13 **Q.** Okay. They'll -- you know, they'll come in
11:25:07 14 with even a printout and say, "Look, I have all of
11:25:11 15 these"?

11:25:12 16 **A.** No, I've never seen that.

11:25:14 17 **Q.** Happening with other doctors?

11:25:15 18 **A.** Oh, yes. Yeah.

11:25:17 19 **Q.** Someone looks up on the internet and think they
11:25:20 20 have a far more serious illness than they actually
11:25:22 21 do?

11:25:22 22 **A.** I'm sure that happens.

11:25:23 23 **Q.** They can type in headache and it says "Ebola";
11:25:27 24 right? That sometimes happens?

11:25:31 25 **A.** I'm sure that does happen.

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11:25:32 1 Q. Okay. And do you know whether Mr. Brockman has
11:25:35 2 ever Googled his symptoms?
11:25:38 3 A. No, I do not know.
11:25:39 4 Q. Did he ever tell you that he's looked up
11:25:43 5 symptoms on the internet?
11:25:45 6 A. No.
11:25:45 7 Q. Okay. Let's shift gears a little bit. I want
11:25:48 8 to talk you to a little bit about your medical
11:25:50 9 records here. That's DX-80.
11:25:58 10 A. Okay.
11:25:58 11 Q. I'll hand you a copy, just to facilitate.
11:26:06 12 A. Thank you.
11:26:08 13 Q. Actually, I'll give you the stapled copy so you
11:26:11 14 don't have to. All right. So these are your
11:26:16 15 medical records related to -- not all of them,
11:26:20 16 obviously, because it's a phonebook -- but these are
11:26:22 17 some of your medical records related to your
11:26:24 18 treatment of Mr. Brockman; is that fair?
11:26:26 19 A. Correct.
11:26:26 20 Q. At least with some of these, it appears that
11:26:29 21 what you are doing is you are kind of -- you are
11:26:31 22 writing down on sort of other paper you have in your
11:26:36 23 hands notes during your treatment?
11:26:37 24 A. Correct. Correct.
11:26:38 25 Q. And so, the notes aren't always related to

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11:26:41 1 whatever the piece of paper is, but that's just the
11:26:44 2 piece of paper in your hands when you are writing
11:26:46 3 the notes; is that fair?

11:26:47 4 **A.** Correct.

11:26:47 5 **Q.** And so, like on Page 2 you have a note, "Frank
11:26:53 6 Gutierrez. Three months. Texas Healthcare."

11:26:56 7 You learned that information and
11:26:58 8 wrote it down that day?

11:26:59 9 **A.** Correct.

11:26:59 10 **Q.** Is it fair to say that we can rely on the times
11:27:02 11 there? So this is printed Monday, June 14, 2021, at
11:27:07 12 1:30?

11:27:08 13 **A.** That was the date of the visit.

11:27:09 14 **Q.** And that's probably the date -- you are writing
11:27:11 15 -- you are not pulling paper out from three months
11:27:14 16 ago; is that fair?

11:27:14 17 **A.** No. No.

11:27:16 18 **Q.** And that's true kind of throughout these
11:27:18 19 records; is that fair?

11:27:19 20 **A.** Right.

11:27:20 21 **Q.** Now, I want you to turn to -- there's sort of
11:27:29 22 Bates numbers on the bottom, so 5062. And this is
11:27:42 23 discussing -- this is -- these are Dr. Jankovic's
11:27:50 24 notes; is that fair?

11:27:54 25 **A.** Okay. Thank you.

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11:28:02 1 Q. These aren't your notes but Dr. Jankovic's
11:28:04 2 notes; right?

11:28:05 3 A. Correct.

11:28:06 4 Q. Okay. But these are notes that you considered
11:28:08 5 in your care of Mr. Brockman?

11:28:10 6 A. Correct.

11:28:10 7 Q. Okay. Here it says his, "RBD has improved
11:28:17 8 since being placed on Trazodone" --

11:28:24 9 T-R-A-Z-O-D-O-N-E."

11:28:25 10 A. Correct.

11:28:26 11 Q. What is RBD?

11:28:40 12 A. I'm not sure what that abbreviation is.

11:28:42 13 Q. Okay. Is that -- if we go to the next page,
11:28:46 14 does that refresh your recollection that it's REM
11:28:49 15 behavioral disorder?

11:28:50 16 A. Okay. Okay.

11:28:59 17 Q. Are you familiar with what REM behavioral
11:29:01 18 disorder?

11:29:02 19 A. The answer is not to the degree of the sleep
11:29:05 20 specialist would.

11:29:05 21 Q. Okay. Dr. Jankovic's not a sleep specialist;
11:29:08 22 is that fair?

11:29:08 23 A. Correct.

11:29:09 24 Q. Did you order a sleep study among the many
11:29:12 25 tests you ordered here?

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11:29:13 1 **A.** No.

11:29:14 2 **Q.** So it's fair to say the REM behavioral disorder
11:29:18 3 -- that's based on something Mr. Brockman or his
11:29:21 4 wife reported; is that fair?

11:29:26 5 **MR. VARNADO:** Objection. Calls for
11:29:27 6 speculation.

11:29:28 7 **THE WITNESS:** Yeah, I don't know where
11:29:29 8 that -- that -- that pattern of history came from.

11:29:34 9 **MR. LANGSTON:**

11:29:34 10 **Q.** Okay. But you are not aware of any --

11:29:36 11 **MR. LANGSTON:** I'll rephrase, Your
11:29:37 12 Honor.

11:29:37 13 **THE COURT:** Okay.

11:29:37 14 **MR. LANGSTON:**

11:29:37 15 **Q.** You are not aware of any sleep study that was
11:29:42 16 done?

11:29:42 17 **A.** Not at that time. I'm aware of sleep studies
11:29:46 18 done currently.

11:29:46 19 **Q.** But those sleep studies did not happen until
11:29:49 20 2021?

11:29:50 21 **A.** Correct.

11:29:50 22 **Q.** You weren't the person that actually ordered
11:29:53 23 those sleep studies?

11:29:54 24 **A.** I was not.

11:29:55 25 **Q.** It was Dr. Darby?

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11:29:56 1 **A.** It was somebody on the prosecution team.

11:29:58 2 **Q.** Okay. You've never ordered a sleep study?

11:30:01 3 **A.** I have not.

11:30:01 4 **Q.** You are not aware of any member of your team

11:30:04 5 ordering a sleep study?

11:30:05 6 **A.** That is correct.

11:30:10 7 **Q.** No one came in with a printout of a sleep study

11:30:15 8 done at another lab?

11:30:16 9 **A.** That is correct.

11:30:17 10 **Q.** Okay. I want to ask you now about 5057.

11:30:38 11 **A.** Okay. 5057. There I am.

11:30:41 12 **Q.** Okay. And these aren't your notes; is that

11:30:44 13 fair to say?

11:30:44 14 **A.** They are not.

11:30:47 15 **Q.** It's actually a letter from Mr. Brockman to

11:30:50 16 you, or some sort of piece of paper he brought in

11:30:54 17 with him?

11:30:54 18 **A.** Correct.

11:30:55 19 **Q.** Okay. This is something -- this came from him;

11:31:00 20 is that fair to say?

11:31:02 21 **A.** Yes. He has his name at the bottom, correct.

11:31:14 22 **Q.** These are his notes?

11:31:15 23 **A.** Correct.

11:31:16 24 **Q.** This is something he came to the examination

11:31:18 25 prepared with?

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11:31:19 1 **A.** Correct.

11:31:19 2 **Q.** It says, "In addition to the problems listed on
11:31:22 3 10/1/18, these are the newly added issues"; is that
11:31:28 4 fair?

11:31:28 5 **A.** Correct.

11:31:29 6 **Q.** Okay. And then the next page, is that sort of
11:31:34 7 an attachment that he brought in?

11:31:41 8 **A.** That is correct.

11:31:42 9 **Q.** Okay. Is that his handwriting at the bottom or
11:31:45 10 your handwriting?

11:31:46 11 **A.** No, it's not me.

11:31:47 12 **Q.** So it's not your handwriting?

11:31:49 13 **A.** Not at all.

11:31:50 14 **Q.** In fact, you were not even his doctor as of
11:31:52 15 October 1, 2018; is that fair?

11:31:54 16 **A.** That is correct.

11:31:55 17 **Q.** So this is not something you could have had in
11:31:58 18 your medical records; right?

11:31:59 19 **A.** Correct.

11:32:00 20 **Q.** So best recollection, this is something he
11:32:02 21 brought to you on October 1, 2019 and said, "These
11:32:07 22 are my symptoms as of a year ago"; is that fair?

11:32:12 23 **A.** Correct.

11:32:12 24 **Q.** And these symptoms -- "Bad posture caused by
11:32:17 25 sunken chest. Overall lack of stamina and strength.

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11:32:20 1 Major loss of balance, I couldn't stand up on the
11:32:25 2 foredeck of a flats boat" -- do you know what a
11:32:30 3 flats boat is?

11:32:32 4 A. I assume it's a -- one of the vessels that
11:32:37 5 actually has a front deck on it.

11:32:40 6 Q. Okay.

11:32:41 7 A. You go up on the front deck.

11:32:42 8 Q. Okay. Got you. So if I understand it, this is
11:32:46 9 Mr. Brockman in October of 2019 saying, "These were
11:32:50 10 the symptoms I had on October 1st of 2018"?

11:32:56 11 A. Mm-hmm.

11:32:57 12 Q. Okay. I'm going to show you what I will mark
11:33:03 13 as 159. This is e-mail from Mr. Brockman to Stuart
11:33:31 14 Yudofsky on January 20th of 2019; is that fair?

11:33:34 15 A. Mm-hmm.

11:33:35 16 Q. And so, this would have been -- this is three
11:33:43 17 months after October 1st of 2018; is that fair?

11:33:45 18 A. That is -- yes.

11:33:46 19 Q. Okay. It says, "Stuart, the meeting today went
11:33:51 20 excellently, in spite of some unfortunate news. My
11:33:54 21 belief is that when the whole truth comes out, that
11:33:57 22 issue may look somewhat differently.

11:34:00 23 "On another subject, looking through
11:34:02 24 some more of the symptoms on Google, I have these as
11:34:07 25 well," and then he lists a series of symptoms; is

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11:34:11 1 that fair?

11:34:11 2 **A.** Yes.

11:34:12 3 **Q.** And, "The major loss of balance, I couldn't
11:34:16 4 stand up on the foredeck of a flats boat," is the
11:34:21 5 same thing we were talking about on your list;
11:34:23 6 correct?

11:34:23 7 **A.** Yes.

11:34:23 8 **Q.** In fact, these are almost exactly the same
11:34:27 9 symptoms?

11:34:27 10 **A.** Correct.

11:34:27 11 **Q.** The wording is the same. It's literally the
11:34:33 12 same; right? It's major loss of balance, "I
11:34:36 13 couldn't stand up on the foredeck of a flats boat
11:34:40 14 -- that's exactly what he gave you -- the list he
11:34:41 15 gave you purporting to be symptoms on October 1st,
11:34:43 16 2018?

11:34:43 17 **A.** Correct.

11:34:44 18 **Q.** Okay.

11:34:44 19 MR. LANGSTON: I'll offer 5159.

11:34:47 20 MR. VARNADO: No objection, Your Honor.

11:34:48 21 THE COURT: Without objection, 159 is
11:34:50 22 admitted.

11:35:01 23 MR. LANGSTON:

11:35:01 24 **Q.** Did the Defendant tell you he discussed these
11:35:04 25 symptoms with Dr. Yudofsky prior to talking to you?

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11:35:06 1 **A.** No, I didn't know that he had a relationship
11:35:09 2 with Dr. Yudofsky.

11:35:11 3 **Q.** Okay. But you knew that Dr. Yudofsky was
11:35:13 4 following his care; is that fair to say?

11:35:15 5 **A.** No.

11:35:15 6 **Q.** Dr. Yudofsky received copies of the medical
11:35:22 7 records in this case; didn't he? Well, let's look
11:35:26 8 at 5062 of your -- again, this is Defense
11:35:36 9 Exhibit 80.

11:35:36 10 **A.** 5062?

11:35:37 11 **Q.** Yes. And again -- this one might be easier.
11:35:40 12 It'll be faster on the screen, but you can look at
11:35:45 13 it on paper if you prefer.

11:35:46 14 **A.** Okay. What's on the screen is different than
11:35:56 15 5062 here.

11:35:58 16 **Q.** Go down to the middle section, "Follow-up
11:36:09 17 Visit."

11:36:09 18 **A.** Okay.

11:36:10 19 **Q.** Are we looking at the same thing here, 5062?

11:36:15 20 **A.** Yeah, now we are. Yeah, we are.

11:36:17 21 **Q.** Okay. And it says -- these are Dr. Jankovic's
11:36:21 22 medical records --

11:36:22 23 **A.** I see, Dr. Jankovic's notes. Okay.

11:36:24 24 **Q.** These are Dr. Jankovic's notes; is that fair?

11:36:27 25 **A.** Correct.

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11:36:27 1 Q. But these are included --

11:36:29 2 A. Yes.

11:36:29 3 Q. -- in your medical records; is that fair?

11:36:31 4 A. Correct. Correct.

11:36:32 5 Q. Because you are the quarterback of this team?

11:36:34 6 A. Correct.

11:36:35 7 Q. And this here says, "Also followed up by

11:36:39 8 Dr. Pool and Dr. Yudofsky"?

11:36:42 9 A. Yeah.

11:36:42 10 Q. Okay. So you were not aware that Dr. Yudofsky

11:36:46 11 was following this case?

11:36:47 12 A. No, I was not aware Dr. Yudofsky -- or was

11:36:50 13 prescribing.

11:36:51 14 Q. Okay. And so -- I mean, as the quarterback of

11:36:56 15 the team is it important you know who all of the

11:36:59 16 players are?

11:36:59 17 A. Yep.

11:36:59 18 Q. And so, your testimony is that Mr. Brockman

11:37:02 19 never told you that Dr. Yudofsky was involved in

11:37:05 20 this case?

11:37:06 21 A. To the best of my knowledge.

11:37:07 22 Q. And that he never told you Dr. Yudofsky was

11:37:10 23 prescribing him medication?

11:37:13 24 A. To the best of my knowledge.

11:37:15 25 Q. He never told you Dr. Yudofsky was consulting

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11:37:17 1 on this case?

11:37:18 2 **A.** To the best of my knowledge.

11:37:20 3 **Q.** Okay. Do you know who Dr. Yudofsky is?

11:37:23 4 **A.** Oh, certainly.

11:37:24 5 **Q.** Okay. And you just were not -- he has a
11:37:27 6 relationship with Baylor -- prior relationship?

11:37:30 7 **A.** He was our former Chairman of Psychiatry.

11:37:35 8 **Q.** And so, had he asked to participate in this
11:37:37 9 case you are probably not turning him down; is that
11:37:39 10 fair?

11:37:39 11 **A.** Correct. Correct.

11:37:40 12 MR. VARNADO: Just a clarification on
11:37:41 13 this case. --

11:37:43 14 MR. LANGSTON: Sorry. I'll clarify.

11:37:45 15 **Q.** If he'd asked you to consult on Mr. Brockman's
11:37:48 16 care, you wouldn't have turned him down?

11:37:49 17 **A.** That is correct.

11:37:50 18 **Q.** Okay. But your testimony is that Doctor --
11:37:55 19 Mr. Brockman never told you Dr. Yudofsky was
11:37:57 20 participating?

11:37:57 21 **A.** And also, Dr. Yudofsky never contacted me.

11:38:00 22 **Q.** Okay. And I think you said that Dr. Lerner was
11:38:07 23 the first doctor to make a referral on this?

11:38:09 24 **A.** Correct.

11:38:09 25 **Q.** And so, the Defendant -- according to you, the

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11:38:12 1 Defendant never told you that Dr. Yudofsky was
11:38:14 2 involved in his care at all?

11:38:19 3 **A.** Correct.

11:38:20 4 **Q.** So if he was speaking to Dr. Yudofsky about his
11:38:23 5 care, it was outside the team you managed; is that
11:38:26 6 fair?

11:38:27 7 **A.** I have not seen this in any other documents.

11:38:29 8 **Q.** You had no discussions with Dr. Yudofsky about
11:38:35 9 Mr. Brockman's care?

11:38:35 10 **A.** Correct.

11:38:36 11 **Q.** Okay. And again, I think you said you were
11:38:40 12 sort of hand writing notes on these medical records?

11:38:43 13 **A.** Mm-hmm.

11:38:44 14 **Q.** The things you are writing down are the things
11:38:47 15 Mr. Brockman is telling you during these interviews
11:38:49 16 or appointments?

11:38:50 17 **A.** Or Dorothy, but they are always in the room at
11:38:54 18 the same time.

11:38:54 19 **Q.** Okay. You are not writing down anything on
11:38:56 20 these records that wasn't told to you; is that fair?

11:39:01 21 **A.** Correct.

11:39:01 22 **Q.** Okay. And let's go to -- let's go to the
11:39:11 23 5-0-6-0, current medications list from Friday,
11:39:27 24 March 15, 2019; is that fair?

11:39:29 25 **A.** March 15, 2019; mm-hmm.

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11:39:42 1 Q. I think you said earlier these are things you
11:39:45 2 are writing down on that date?

11:39:46 3 A. Correct.

11:39:46 4 Q. So Mr. Brockman -- I think you said if there's
11:39:49 5 quotes that's things Mr. Brockman actually said to
11:39:51 6 you?

11:39:51 7 A. Okay. Mm-hmm.

11:39:52 8 Q. And so, "Lack of energy."

11:39:55 9 You asked him if he went to the
11:39:58 10 Houstonian -- or if he was exercising and he said
11:40:01 11 the Houstonian three days a week; is that fair?

11:40:03 12 A. Correct.

11:40:03 13 Q. He told you that he had seen Dr. Golberg
11:40:05 14 (phonetic) about a melanoma?

11:40:06 15 A. Correct.

11:40:07 16 Q. He was seeing Dr. Jankovic about cognitive
11:40:10 17 issues; right?

11:40:10 18 A. Correct.

11:40:11 19 Q. And then five is Dr. Yudofsky?

11:40:14 20 A. In September of 2018; correct.

11:40:17 21 Q. So the Defendant told you that he'd been seeing
11:40:21 22 Dr. Yudofsky in September of 2018?

11:40:23 23 A. Correct. Yeah.

11:40:26 24 Q. But you never followed up with Dr. Yudofsky?

11:40:28 25 A. No.

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11:40:29 1 Q. And you were not aware of any medical care
11:40:32 2 Dr. Yudofsky was giving to the Defendant in
11:40:35 3 September of 2018?

11:40:37 4 A. Correct.

11:40:39 5 Q. Okay. And --

11:40:41 6 THE COURT: Can I -- and so you weren't
11:40:44 7 aware -- I just need to ask a question -- of any
11:40:48 8 medications that Dr. Yudofsky had prescribed, other
11:40:51 9 than this note from Mr. Brockman at this time?

11:40:54 10 THE WITNESS: Well, Judge, actually if
11:40:55 11 you look at Page 61 --

11:40:59 12 THE COURT: Yes, sir.

11:41:01 13 THE WITNESS: -- lining across, you can
11:41:05 14 see the release of medications list from January 1,
11:41:11 15 2018, to March 15, 2019. Dr. Yudofsky had
11:41:15 16 prescribed, through Briar Grove Pharmacy, Trazodone,
11:41:22 17 50-milligram tablet, which was March of '19 -- no.
11:41:28 18 No. No. That actually came from Jankovic.

11:41:32 19 Yudofsky was December 26th of '18 -- Bupropion.

11:41:43 20 THE COURT: Can you turn the page,
11:41:44 21 Counsel, so I can see it?

11:41:46 22 MR. LANGSTON: Yes, of course, Your
11:41:47 23 Honor. I can hand the Court a copy, too.

11:41:50 24 THE COURT: Sure. I can see a copy.

11:42:07 25 THE WITNESS: You'll notice that

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11:42:08 1 although Dr. Jankovic is talking about Dr. Yudofsky
11:42:13 2 prescribing the Trazodone, actually he's the one
11:42:16 3 that is prescribing it.

11:42:17 4 THE COURT: Okay.

11:42:21 5 THE WITNESS: The records from Briar
11:42:23 6 Grove say that he's prescribing it.

11:42:30 7 MR. LANGSTON:

11:42:31 8 Q. Fair to say Dr. Yudofsky is, in fact,
11:42:33 9 prescribing the Defendant medication?

11:42:35 10 A. Wellbutrin in 2018 -- yeah, at least one
11:42:49 11 medication here, but it's not the one Dr. Jankovic's
11:42:52 12 talking about. But it is the one that I noted that
11:42:54 13 he had told me about.

11:42:56 14 Q. Okay. So you are the quarterback of this team;
11:43:00 15 right?

11:43:00 16 A. Correct.

11:43:01 17 Q. There's a player running around doing their own
11:43:04 18 thing; is that fair?

11:43:05 19 A. Well, that is sort of fair, but you realize
11:43:11 20 that I didn't recognize that Stuart Yudofsky had
11:43:18 21 prescribed something in 2018, but I must have
11:43:21 22 interrogated. In March of '19, I actually requested
11:43:28 23 a complete printout for -- what's that, 15 months --
11:43:33 24 to see what was being prescribed in the background.

11:43:38 25 Q. Okay. And was that because the Defendant told

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11:43:43 1 you he was seeing this other doctor, or was that
11:43:45 2 because you just wanted to be prepared for the
11:43:48 3 clinic visit?

11:43:48 4 **A.** I wanted to be up to date on what medications
11:43:52 5 were being prescribed.

11:43:53 6 **Q.** Okay. If we're looking at 5061, you kind of
11:43:57 7 write "Clinic visit: Friday, 3/15/2019"?

11:44:04 8 **A.** Yes.

11:44:05 9 **Q.** So this is something you printed out in advance
11:44:06 10 of the meeting to be prepared for it; is that fair?

11:44:09 11 **A.** No, after the meeting.

11:44:10 12 **Q.** Okay.

11:44:10 13 THE COURT: You have another copy of
11:44:12 14 this; right?

11:44:13 15 MR. LANGSTON: Yeah, you can keep it.

11:44:14 16 THE COURT: Okay. Great.

11:44:16 17 THE WITNESS: No, that -- that -- the
11:44:18 18 phenomenon -- I would assume that the phenomenon of
11:44:21 19 my point of Stuart Yudofsky's 2018, triggered me to
11:44:30 20 then request from Briar Grove Pharmacy a printout of
11:44:36 21 the medications prior to 2018, to the present so I
11:44:38 22 could see what was being prescribed.

11:44:43 23 **Q.** Got you.

11:44:43 24 **A.** And by whom.

11:44:45 25 **Q.** Okay. You are saying that the first time you

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11:44:49 1 learned he was involved in Mr. Brockman's care would
11:44:51 2 have been March of 2019?
11:44:53 3 **A.** Correct.
11:44:54 4 **Q.** Okay. Let's go to 5-0 -- actually, hang on a
11:45:01 5 second. Actually, let's go to 5-0-5-9?
11:45:05 6 **A.** Okay.
11:45:10 7 **Q.** And just to orient us to time, this was printed
11:45:13 8 October 1st of 2019?
11:45:14 9 **A.** Mm-hmm.
11:45:15 10 **Q.** Okay. And so that's the day you are writing
11:45:18 11 these things down; is that fair?
11:45:19 12 **A.** Correct.
11:45:19 13 **Q.** All right. And you have sort of "Follow-Up",
11:45:24 14 is that "FU" means?
11:45:26 15 **A.** Yes.
11:45:27 16 **Q.** There's a series of doctors listed there?
11:45:29 17 **A.** Correct.
11:45:30 18 **Q.** Dr. Lerner, Fall of 2018?
11:45:32 19 **A.** Correct.
11:45:32 20 **Q.** Dermatology, Dr. Shore -- S-H-O-R-E?
11:45:38 21 **A.** Correct.
11:45:38 22 **Q.** Eye doctor -- Dr. Slade; right?
11:45:41 23 **A.** Correct.
11:45:42 24 **Q.** Dental?
11:45:42 25 **A.** Correct.

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11:45:43 1 Q. Forensic orthopedics. These are all of the
11:45:46 2 doctors he's been seeing; is that fair?
11:45:48 3 A. Correct.
11:45:48 4 Q. Dr. Gould (phonetic) in March of 2019?
11:45:53 5 A. Correct.
11:45:54 6 Q. Are you -- is this a note to yourself to remind
11:45:57 7 yourself to follow up, or is this -- these are --
11:46:00 8 A. No, this is a list of follow-ups. This is
11:46:03 9 listing the physicians that he had seen, and
11:46:08 10 approximately when they'd been seen.
11:46:10 11 Q. Got you. So these -- these are physicians that
11:46:13 12 the Defendant is telling you that he has seen?
11:46:16 13 A. Correct.
11:46:17 14 Q. Okay. Do you see number one?
11:46:18 15 A. Yes, Dr. Yudofsky.
11:46:20 16 Q. Dr. Yudofsky. And that's Dr. Stuart Yudofsky?
11:46:24 17 A. Correct.
11:46:25 18 Q. So it's fair to say the Defendant told you in
11:46:27 19 October he had been seeing Dr. Yudofsky?
11:46:31 20 A. I'm not sure -- I do know what this means. And
11:46:35 21 that is that he and Stuart Yudofsky had been on a
11:46:39 22 fishing trip into Alaska for a week.
11:46:45 23 Q. Okay. And so, are you saying -- this is a list
11:46:50 24 of seven doctors; is that fair?
11:46:52 25 A. Right.

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11:46:53 1 Q. Your testimony is that what it actually is, is
11:46:55 2 a list of six doctors and somebody he went fishing
11:46:57 3 with?

11:47:00 4 A. Yes.

11:47:00 5 Q. Are there anyone on this list that's not a
11:47:04 6 doctor?

11:47:12 7 A. No.

11:47:13 8 Q. Just to make sure I understand your testimony,
11:47:15 9 you are testifying that you are making a list of
11:47:16 10 doctors; correct?

11:47:17 11 A. Correct.

11:47:17 12 Q. And that "FU" means that these are doctors that
11:47:20 13 he has seen?

11:47:21 14 A. Follow-ups; right.

11:47:23 15 Q. And that Dr. Yudofsky -- that one is not a
11:47:26 16 follow-up. That's just a fishing buddy?

11:47:28 17 A. Yeah.

11:47:32 18 Q. When you say, "Dr. Lerner, Fall of 2018,"
11:47:36 19 that's when the appointment happened; is that fair?

11:47:39 20 A. Correct. That's the last time he was seen.

11:47:41 21 Q. Okay. And, "Eye doctor, Dr. Steve Slade, later
11:47:46 22 than one year" -- that's the last time he saw him?

11:47:48 23 A. Correct.

11:47:49 24 Q. And Dr. Gould March of 2019?

11:47:53 25 A. Correct.

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11:47:53 1 Q. That's when he saw him?

11:47:54 2 A. Correct.

11:47:55 3 Q. But for Dr. Yudofsky, that's totally unrelated
11:47:58 4 and about a random fishing trip?

11:48:00 5 A. Not -- not -- I'm not sure exactly why the
11:48:03 6 emphasis there was on contact with Yudofsky for a
11:48:08 7 fishing trip as opposed to a visit -- don't know.

11:48:11 8 Q. And you don't -- you don't list anyone else
11:48:13 9 he's had social trips with; right?

11:48:15 10 A. Correct.

11:48:15 11 Q. And you are aware that the Defendant has a
11:48:18 12 social relationship with Dr. Slade?

11:48:21 13 A. No, I'm not.

11:48:21 14 Q. Okay. So with respect to at least Dr. Slade,
11:48:24 15 you are discussing medical treatment?

11:48:28 16 A. Correct.

11:48:29 17 Q. With respect to Dr. Shore, you are assessing
11:48:32 18 medical treatment?

11:48:33 19 A. Correct.

11:48:33 20 Q. With Dr. Lerner, medical treatment?

11:48:35 21 A. Correct.

11:48:36 22 Q. With Dr. Kozaland (phonetic) -- that's medical
11:48:42 23 treatment?

11:48:43 24 A. Orthopedic low back pain, October 2019;
11:48:45 25 correct.

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11:48:45 1 Q. Dr. Gould (phonetic), medical treatment?

11:48:47 2 A. Correct.

11:48:47 3 Q. Yudofsky, not medical treatment?

11:48:49 4 A. Correct.

11:48:51 5 MR. LANGSTON: Nothing further, Your
11:48:52 6 Honor.

11:48:52 7 THE COURT: Okay. Redirect?

11:48:52 8 REDIRECT EXAMINATION

11:48:52 9 BY MR. VARNADO:

11:49:06 10 Q. Dr. Pool, there were a lot of questions about

11:49:07 11 Dr. Yudofsky that don't have anything to do with

11:49:09 12 this case. I want to show you Defense Exhibit 80.

11:49:13 13 Fair to say this is the page ending in 5062.

11:49:20 14 Mr. Langston showed you Dr. Jankovic's note?

11:49:25 15 A. Correct.

11:49:25 16 Q. It's fair to say Dr. Jankovic knew in March of

11:49:30 17 2019 that Dr. Yudofsky was prescribing something to

11:49:35 18 Mr. Brockman; fair?

11:49:37 19 A. Correct.

11:49:37 20 Q. That was dated this -- this note's dated

11:49:40 21 March 13th. You said that in anticipation of a

11:49:44 22 visit on March 15th, this next page of records --

11:49:48 23 again, this is 2019 -- you obtained this record from

11:49:52 24 Briar Grove Pharmacy. It's Bates stamped 5061 at

11:49:56 25 the bottom.

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11:49:57 1 **A.** Correct.

11:49:57 2 **Q.** That also disclosed some medications prescribed
11:50:00 3 by Dr. Yudofsky. In particular, what is that
11:50:02 4 called?

11:50:02 5 **A.** Trazodone -- oh, I'm sorry. You are asking
11:50:06 6 about the specific -- Bupropion is an
11:50:13 7 anti-depressant.

11:50:14 8 **Q.** What is another name for that?

11:50:15 9 **A.** Wellbutrin.

11:50:16 10 **Q.** And then, when you actually met with
11:50:19 11 Mr. Brockman on March 15, 2019, two days after the
11:50:23 12 note from Dr. Jankovic, he told you that he was
11:50:27 13 seeing Stuart Yudofsky for Wellbutrin, and you put
11:50:30 14 it in your note?

11:50:31 15 **A.** Correct.

11:50:32 16 **Q.** Did you just forget about that coming to
11:50:34 17 testify there was some reference to Dr. Yudofsky
11:50:36 18 randomly in these records?

11:50:37 19 **A.** Yeah. Yes. Yeah, because that's the last time
11:50:40 20 I have any recognition of Stuart Yudofsky being
11:50:42 21 mentioned.

11:50:43 22 **Q.** And I'm going to show you Government
11:50:49 23 Exhibit 157. This was that note from Dr. Lai on
11:50:51 24 February 2nd of 2021. Mr. Langston showed you his
11:50:56 25 impression that it was significant for clinical

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11:50:58 1 findings consistent with Parkinson's disease with
11:51:00 2 mild cognitive impairment?

11:51:02 3 **A.** Right.

11:51:03 4 **Q.** And then we showed you Defense Exhibit 48,
11:51:06 5 which is the next time that Mr. Brockman saw Dr. Lai
11:51:10 6 in October of 2021. You see that now the impression
11:51:16 7 is clinical findings consistent with Parkinson's
11:51:18 8 disease with associated dementia?

11:51:20 9 **A.** Right.

11:51:22 10 **Q.** Between February 2nd of 2021 and October 7th of
11:51:27 11 2021, how many times had Mr. Brockman been
11:51:31 12 hospitalized?

11:51:35 13 **A.** Two.

11:51:37 14 **Q.** Well, let me go through them in order. Was
11:51:39 15 Mr. Brockman hospitalized in March of 2021 with
11:51:42 16 urosepsis?

11:51:42 17 **A.** Yes.

11:51:42 18 **Q.** Was he hospitalized in May, and into June of
11:51:45 19 2021 with urosepsis?

11:51:47 20 **A.** Yes.

11:51:48 21 **Q.** Did he undergo a surgical procedure under
11:51:52 22 general anesthesia in June of 2021?

11:51:55 23 **A.** Yes.

11:51:55 24 **Q.** Was he also hospitalized with urosepsis in
11:51:57 25 September of 2021?

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11:51:59 1 **A.** Yes.

11:51:59 2 **Q.** You mentioned that the diagnosis of dementia
11:52:04 3 deals with -- when somebody's dementia begins to
11:52:09 4 impact daily life and ability to handle independent
11:52:13 5 tasks; correct?

11:52:14 6 **A.** Yes.

11:52:15 7 **Q.** And have you observed that in your visits with
11:52:17 8 Mr. Brockman that he is being impacted in his daily
11:52:21 9 life and independent tasks with his dementia?

11:52:23 10 **A.** Yes.

11:52:24 11 MR. VARNADO: No further questions.

11:52:27 12 THE COURT: Recross?

11:52:28 13 MR. LANGSTON: Very briefly, Your
11:52:29 14 Honor.

11:52:29 15 **RECROSS-EXAMINATION**

11:52:29 16 **BY MR. LANGSTON:**

11:52:36 17 **Q.** I think you testified between October of 2021,
11:52:39 18 Mr. Brockman was hospitalized?

11:52:40 19 **A.** Correct.

11:52:40 20 **Q.** And so, it's possible that's the reason why his
11:52:43 21 diagnosis changed; is that fair?

11:52:46 22 **A.** Are you referencing Dr. Lai's --

11:52:50 23 **Q.** Yes.

11:52:51 24 **A.** Yes. The answer to that is that there were
11:52:53 25 four sentinel events if you count the general

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11:52:58 1 anesthesia for UroLift®.

11:53:01 2 Q. Okay. Are you also aware the competency
11:53:03 3 hearing was scheduled between those two dates?

11:53:05 4 A. No.

11:53:05 5 Q. Were you aware the experts had been examining
11:53:07 6 Mr. Brockman between those two dates?

11:53:09 7 A. Yes.

11:53:09 8 Q. Okay. And then, I just want to make sure I
11:53:12 9 have your testimony clear about the Yudofsky notes.

11:53:16 10 So you are testifying that you were aware in at
11:53:19 11 least March of '19 that Dr. Yudofsky had been
11:53:23 12 prescribing medication to Mr. Brockman?

11:53:25 13 A. Correct.

11:53:26 14 Q. Okay. But -- I'm putting back up Defense
11:53:30 15 Exhibit 80. But your testimony is that this note
11:53:33 16 refers to a fishing excursion, and not to medical
11:53:36 17 treatment?

11:53:36 18 A. Correct.

11:53:37 19 Q. Okay.

11:53:38 20 MR. LANGSTON: Nothing further, Your
11:53:40 21 Honor.

11:53:40 22 MR. VARNADO: No more questions, Your
11:53:41 23 Honor.

11:53:41 24 THE COURT: Can Dr. Pool be excused?

11:53:43 25 MR. VARNADO: Yes.

SEAN W. GUMM, CSR #13168, RPR, CRR

11:53:43

1

THE COURT: Dr. Pool, thank you, sir.

11:53:45

2

I know it's been a long wait. Appreciate it.

11:54:23

3

Since we're going to start up a new

11:54:24

4

witness, let's take our lunch break. We'll be back

11:54:29

5

at one o'clock.

11:54:31

6

(PROCEEDINGS ADJOURNED AT: 11:54 A.M.)

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C E R T I F I C A T E

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I hereby certify that pursuant to Title 28,

13

Section 753 United States Code, the foregoing is a

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true and correct transcript of the stenographically

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reported proceedings in the above matter.


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Certified on 11/23/2021.

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Sean Gumm, RPR, CRR

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